Supreme Court, U.S.
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10-677

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN DAVID FOX,

Petitioner,

vs.

THE STATE OF FLORIDA BAR ASSOCIATION,

Respondent.

ON PETITION FOR CERTIORARI TO THE
FLORIDA SUPREME COURT

PETITIONER FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES

This is a petition from the Florida Supreme Court, which dismissed the Petitioner's Petition to Vacate the ongoing ten (10) year *temporary* suspension of his law license under the "no defense" Rule 5-1.2(f)(1)(1992) upon a claim of his failure to comply with a Grievance Committee subpoena, for which all available documents were produced on *February 29, 2000* and the Petitioner claims compliance. The issues are:

1.) Whether the "no defense" provision of Florida Bar Trust Accounting Rule 5-1,2(f)(2) (1992) applied herein and reenacted on 02/01/2010, which continues to deprive *all* attorneys and the Petitioner of *all rights* in any disciplinary proceeding, is unconstitutional per se and as applied?

2.) Whether, the Petitioner, despite his status as an Attorney, is entitled to due process, equal protection and protection from prosecutorial misconduct even where the prosecutors are employees of the Florida Supreme Court?

3.) Whether Florida's Attorney Discipline Rule 2-3.1 and as reenacted on 10/01/2010, employing Florida Bar prosecutors as agents of the Florida Supreme Court, allowing the combination of the functions of prosecution, judge and jury, violates due process?

4.) Whether the ongoing ten (10) year *temporary* suspension of the Petitioner's law license without a hearing on compliance as required on the face of the order of temporary suspension, for failure to comply with a Grievance Committee subpoena, in the face of a

claim of compliance, is so arbitrary and capricious as to shock the conscience of the Court, where the Petitioner has claimed compliance based upon the undisputed fact that all available documents were produced on *February 29, 2000*, at a hearing before the same Grievance Committee, which had issued the subpoena, and which promptly found that the Petitioner had done nothing wrong and closed its file?

5.) Whether Rule 5-1.2(f)(1) lawfully allows the prosecution employed as agents of the Florida Supreme Court, may circumvent Attorney-Client Confidentiality, due process, equal protection and prosecutorial misconduct claims, and use a subpoena to force the Petitioner to chose between defending his clients' privilege and defending himself by divulging client records, which exonerate him, but expose his clients to public ridicule and civil and criminal prosecution?

6.) Whether Rule 5.1.2(f)(1) and the Florida system for attorney discipline lawfully permits prosecutors employed as agents of the Florida Court to have *ex parte* communications with and to provide *ex parte* information to, triers of fact and the Florida court?

7.) Whether the prosecution as employees of the Florida Supreme Court may secretly harass clients make a claim against against their attorney, where the clients repeatedly refuse to make any claim?

8.) Whether the prosecution as agents employed by the Florida Supreme Court may continue to shop for a Grievance Committee complaint, after the denial of enforcement of its subpoena?

9.) Whether the prosecution as agents employed by the Florida Supreme Court secretly provide papers with impunity to a Referee and to use a Referee, who has a previously known, open and obvious conflict of interest with the attorney, who is being prosecuted?

10.) Whether the prosecution as employees of the Florida Supreme Court may secretly conduct an ex parte hearing for compliance with a subpoena upon which these proceedings are based, which was not noticed for hearing and the hearing proceeded off the record, notwithstanding, Florida's Conflict Rules codified as 2.052 l.R.Jud.Admin., where it was undisputed that on January 20, 1998, the Petitioner in Seattle at an employer's arbitration trial?

11.) Whether it is a denial of due process and equal protection for the Florida Supreme Court enter orders prepared for it by prosecutors employed as agents of the Florida Supreme Court, denying attorneys all rights afforded all citizens in Florida Appellate Rules 9.300(b) and 9,340(b) to stay and rehearing?

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OPINIONS BELOW

The order of the Florida Supreme Court, dated May 26, 2010, dismissing Fox's Petition to Vacate without a hearing, or oral argument, is contained in the Appendix at A1. The dismissal of the Petition to Vacate is a Final Order under the Florida Court's process for reinstatement. *See*, A1 (Docket entry upon Order of July 14, 2010: "Please understand that once this case is dismissed, it is not subject to reinstatement").

The Florida Court's order is reported as *The Florida Bar v. Calvin David Fox,* 44 So.3d 107 (Fla. 2010); *The Florida Bar v. Calvin Fox*, 2010 West Law 2163887 and *Florida Bar v. Fox,* Case No. SC08-1328, floridasupremecourt.org/clerk/dispositions/2010.

The subject of Fox's Petition to Vacate, the Florida Court's interlocutory, temporary suspension, entered on November 24, 1999, on its face requires a hearing if there is,"any dispute as to whether compliance is satisfactory." *See*, A77-A78.

JURISDICTION

On August 19, 2010 the Florida Supreme Court denied rehearing. A2. Fox asks for jurisdiction under 28 U S C 1254 and Rule 10 Rules of the Court.

This Court has jurisdiction upon a conflict with *Spevak v. Klein*, 385 U.S. 625 (1967), which held that attorneys *are* citizens with rights to due process and equal protection, and therefore Florida's "no defense" Rule 5-1.2(f)(1) (1992) denying all attorneys of all rights in disciplinary proceedings is unconstitutional.

This Court has jurisdiction upon the conflict among the States, where nine (9) of twelve (12) States have reported that they do not have the unlawful "no defense" rule for attorneys and at least two (2) states have declared the lack of separation of the functions of prosecution, judge and jury, as in Florida's attorney discipline system, a denial of due process.

This Court has jurisdiction upon a conflict with *In Re Murchison*, 349 U.S. 133 (1955), where the Court held that it is a denial of due process to allow the combination of prosecutor, judge and jury in prosecutors, as in Florida's attorney discipline system.

This Court has jurisdiction upon a conflict with *United States v. Berger*, 295 U.S. 78, 88 (1935) where the Court held that it is the duty of a reviewing court to act upon prosecutorial misconduct, where Florida allows prosecutorial misconduct with impunity in Florida's attorney disciplinary system, because the prosecutors are immune from review, employed as agents of the Florida Supreme Court.

CONSTITUTIONAL and STATUTORY PROVISIONS

The due process clause of the Fourteenth Amendment to the United States Constitution provides that:

> "No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 5-1.2(f)(1) Florida Bar Trust Accounting Rules (1992) applied herein and reenacted on 02/01/2010 as Florida Rules of Discipline Rule 3-7,11(d)(7)(b), denies all attorneys all defenses in an attorney disciplinary proceeding, providing, *inter alia*, that:

> "Members of the bar . . . may not assert any privilege personal to the lawyer . . . "

Rule 501 Federal Rules of Evidence provides, *inter alia*, that:

> [T]he privilege of a witness ...shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience.

28 U.S.C. Section 1257(a) provides *inter alia*, that::

> "Final Judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari.

Rule 10 Supreme Court Rules provides, in part, that Review may granted when,

> "b) a state court has decided an important federal question in a way that conflicts with the decision of another a state court of last resort or of a United States court of appeals; "(c) a state court . . . had decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal decision in a way that conflicts with relevant decisions of this Court."

STATEMENT OF THE PROCEEDINGS

A. Florida's Attorney Discipline System.

The Florida Supreme Court uses an attorney disciplinary system which combines the functions of prosecutor, judge and jury in Florida Bar attorneys, who are empowered as "quasi-judical" agents of the Florida Supreme Court and are regarded as "arms of the Florida Supreme Court." *E.g. Mueller v. The Florida Bar*, 390 So.2d 449, 451 (Fla.4th DCA 1980); Rule 2-3.1 Rules Governing the Florida Bar, renacted on 10/01/2010 as Rule 3-3.1 Rules Regulating the Florida Bar, "Florida Supreme Court Disciplinary Agencies." They are immune from complaints of prosecutorial misconduct and claims that they have denied constitutional rights. *Id.* Additionally, in attorney disciplinary hearings as in the case at bar, under the "no defense" Rule 5-1.2(f)(1), attorneys may not raise any personal defenses.

In their intimate position as agents employed by

the Florida Supreme Court, Florida Bar attorneys, interact with the Florida Supreme Court and triers of act, not allowed targeted attorneys, and function as prosecutors, judiciary and triers of fact, administering oaths, ordering the production of documents, compelling the attendance of witnesses issuing subpoenas, conducting depositions, approving charges; guiding and advising Grievance Committees in making final determinations of fact and to issue charges. *Id.* When Referees are appointed to confirm what Grievance Committees have said, Florida Bar Attorneys continue to serve as advisors to Referees, providing them with secret memoranda and secret propaganda reminding them how wonderful the Florida Bar is and what cases to follow against the respondent attorney, which are not provided to the respondent, attorney, as in the case at bar.

B. The Temporary, Interlocutory Order of Suspension

Thus, on **November 24, 1999**, notwithstanding complaints about the denial of a host of federal rights and chronic prosecutorial misconduct, the Florida Supreme Court entered an *interlocutory* order form prepared by the Florida Bar, denying any appellate rights under Florida Appellate Rules 9.300 and 9.330, and temporarily suspending Fox's license upon the ground that Fox did not comply with the 1997 subpoena in the case at bar. A77-78. The order of suspension for failure to comply with the Grievance Committee subpoena, specifically recites that:

> "If the suspension becomes effective, it shall continue until such time as notice of compliance is

made by the Florida bar. *Any dispute as to whether compliance is satisfactory shall be determined by the referee." Id.*.

On *February 22, 2000*, the Florida Supreme Court summarily denied all claims and a Motion for Rehearing and Motion to Present Documents in Camera.

However, a week later, on *February 29, 2000,* Gregg Wenzel, new Florida Bar counsel, reconvened the same 11th Circuit Grievance Committee, which had recommended the temporary suspension and conducted an evidentiary hearing. A14-A15. *For the first time*, Fox was allowed to appear, testify and produce documents. It is undisputed that the complaint against Fox was shown to be **frivolous**. The Committee therefore unanimously found that there was no reason to believe Fox had done anything wrong and closed its file. A6; A79-A80.

C. Futile Attempts to Resolve Temporary Suspension upon the Terms of the Order

Initially, on **July 20, 1998**, Fox had settled this cause with new Bar counsel, Wenzel and informed Tony Boggs, the Executive Director of Disciplinary Division the Florida Bar of the circumstances herein with letter written to Wenzel and copy to Boggs. Fox got **no** response from Mr. Boggs. See,, A15-A17 "Futile Attempts to Resolve Suspension Order."

On **January 16, 2001** Fox again wrote of these circumstances to Florida Bar President-Elect, Todd Aronovitz. On or about **June 5, 2001** Mr. Aronovitz

personally met on Fox's behalf with Boggs, in Bogg's Tallahassee office and requested that these circumstances be looked into. Mr. Boggs assured Mr. Aronovitz that he would do so, but **never** replied. *Id.*

On **December 4, 2001**, Fox reminded Mr. Boggs again of these circumstances in detail and forwarded a copy to Florida Bar President Todd Aronovitz. In early 2002, Mr. Boggs wrote saying he would look into it, but **never** responded. *Id.*

On **June 5, 2003** Fox petitioned Mr. Aronovitz and the Board of Governors to review this matter. On **June 11, 2003** Mr. Aronovitz under a false impression that this matter was still pending in the U.S. Supreme Court, sent the matter back to Tony Boggs for a response. Boggs has **never** responded. *Id.*

On **April 28, 2004**, *five (5) years* into Fox's temporary suspension and only in response to Fox's complaint to the Florida *Commission* investigating misconduct by the Florida Bar Lawyer Disciplinary Division, Boggs wrote that he thought that somebody else was responding to Fox. He suggested that Fox should file a petition with the Florida Supreme Court, although the order of suspension does not allow that, and that he could not say what the Bar response might be. A3.

Before the order of temporary suspension, Fox had been a member in good standing of the Florida Bar since May 22, 1975. See A86-89. Even with the order of temporary suspension Fox has remained a member of the Florida Bar, for which "privilege" he has had to continue paying his Florida Bar dues and

keeping up his Florida Bar Continuing Legal Education (CLE) requirements.

THE PRESENT PETITION

On or about *August 1, 2008*, after being ignored for almost nine (9) years upon said temporary, interlocutory order of suspension and unable to get the Florida Bar disciplinary division to do anything, nor to respond upon the provision of the November 24, 1999 interlocutory order of temporary suspension, which require a hearing in the event of a dispute as to compliance, Fox filed his Petition to Vacate the temporary suspension of his law license for failure to comply with the Grievance Committee subpoena and provided repeated statements of compliance. A4-A46; A53-A56 (Reply to Florida Bar); A62-A69 (Affidavit to Correct Report of Sankel).

The record of abuse in the proceedings upon which the initial interlocutory order of temporary suspension is based were provided to this Court in **Fox v. Florida**, U.S. Case No. 99-1887 and are recited in the attached Verified Petition. A4-A46. In the Petition, Reply and supporting documents, Fox repeatedly alleged that all available documents were produced on *February 29, 2000* to the same Grievance Committee, which had issued the subpoena and the Grievance Committee hearing on February 29, 2000, was the only hearing which Fox was permitted to attend. *Id.* The Grievance Committee had therefore promptly issued its Report rejecting the complaint because it could not find any evidence that Fox had done anything wrong. A79 (Committee Order of "No Probable Cause); A80 (Letter to Serbin that Fox has done nothing wrong).

Fox also argued, that the unconscionable, unsupervised delay, which has effectively denied his federal rights for nine (9) years in the Florida Bar disciplinary system, which combines prosecutor, judge and jury, is unconstitutional; and that Rule 5-1.2(f)(1) depriving him of all rights and delaying this cause for almost nine (9) years, was unconstitutional. A17-A44. Fox complained, that he was not notified that he had no rights in the proceeding; that the prosecutors were immune from any complaints; and that he had never agree to the fiction of being be bound by the retroactive taking of his rights. A17-A44.

Searching for some rational basis for the continued abuse herein, Fox ruminated that the Florida Bar prosecutors were conducting a vendetta against Fox, because of his testimony as the former prosecutor in the Roy Stewart death penalty case, where he had been threatened by a prosecutor, not to testify and his testimony prevented an execution; and/or that he had been unlawfully targeted by the Miami office of the Florida Bar disciplinary division. See, *Convictions and Conscience Remain on Trial*, Sun Sentinel, July 16, 1990, p8; A32-A41.

Arlene Sankel, one of the rogue prosecutors, whom Fox complained about in this cause filed an appearance in this case. *See, Verified Motion to Disqualify Sankel* (A46-A52). Sankel was *not* at the February 29, 2000 Grievance Committee hearing. The Florida Supreme Court never ruled upon the Motion to Disqualify Sankel. Instead, the Court ordered that the prosecutor, Sankel, should only reply as to whether or not Fox had complied with the

subpoena. Sankel replied that Fox had not complied with the 1997 Grievance Committee subpoena. A46. The Florida Court was not interested in anything else.

Notwithstanding that the November 24, 1999 order prepared by Sankel for the Florida Supreme Court requires a hearing, where the issue of compliance was disputed, as in the case at bar, the Florida Supreme Court failed to order a hearing and entered a **final** order of dismissal which the Court explained was a **final order** in this case. *See*, A1 [Docket entry].

A. The Underlying Linda Serbin Case

In **November of 1992**, as reflected in our contractual agreement, Linda Serbin, with whom I had been having an affair, came to me in tears complaining to me, a.) that her estranged husband, who was an alcoholic, had been raping and beating her daughter since she was nine (9) years old with both families' knowledge; b.) that she wanted a divorce from Jon Serbin and to save her daughter, who had tried suicide several times; c.) that the bank was about to obtain a final judgment of foreclosure on her $750,000 waterfront house of 21 years for the price of the $300,000 mortgage and she was without legal representation; d.) that she and her husband had both lied under oath to the creditors' lawyers and to the Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center was being grossly mishandled by local counsel. See, A70-A76 (Contract with Serbin).

In the contract letter dated **November 23, 1992** I recited the foregoing and agreed to represent Linda Serbin in the house foreclosure and related matters for the flat sum of $25,000. *Id.* I took her daughter's case to competent counsel, who filed and successfully prosecuted the case; and continued to represent Linda Serbin in several matters up to and including **June 5, 1998**. As noted in my letter I also was compelled to cease further intimate relations with Linda Serbin, because we were running the risk of my being a witness against her in her divorce from Jon Serbin. *Id.*

Thereafter, I was able for seven (7) months to block vigorous successive attempts to sell her house on the Courthouse steps and I obtained a bona fida buyer for **$465,000** and closed the sale. Just prior to that in **May of 1993** I had also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer. *Id.*

On **August 4, 1993**, I gave Linda Serbin a closing statement on the Serbin foreclosure litigation, in which I recited that the $25,000 escrow funds seized from the unrelated defaulting buyer was accepted as my fee and that on June 15, 1993 to assist her in moving I had given $5,000 of my fee back to Linda Serbin. A76. Thereafter, without any further fees, I continued to represent Linda Serbin as the plaintiff in the escrow deposit litigation against an unrelated defaulting buyer and on **June 5, 1998**, I obtained an award of **$27,000**. Thus Linda Serbin had recovered a total of **$517,000** ($465,000 + $25,000 + $27,000), from the sale of her house on the back of the undersigned and she received almost six (6) years of

legal fees (November 1992 to June 1998) for the sum of $25,000. A18-A21. *These facts are not in dispute.*

B. Jon Serbin's Complaint

On September 10, 1996, more than three (3) years after the house foreclosure closing statement to Linda Serbin, I received the complaint of Jon Serbin. A21. Jon Serbin complained that I had kept about $18,000 in my trust account since the sale of the Serbin house in June 1993 without authorization. A22. It was **undisputed** that Jon Serbin had never been my client. Jon Serbin's theory was apparently that I represented Linda Serbin since 1993 for free. I received a letter from Elena Evans asking me to respond to Jon Serbin's complaint, 'to see if this matter should even be referred to a grievance committee.' As reflected in my letters and Motions for a Protective Order, I repeatedly replied that Linda Serbin was my only client and I would be happy to respond if she waived her attorney client privilege, which she repeatedly told me that she did not and she did not wish to make any complaint against me. If I had produced the enclosed written agreement to defend against the Jon Serbin complaint to show Jon Serbin's complaint was frivolous, I would have become a witness against Linda Serbin in her own divorce and a witness against her in state and federal criminal proceedings. Ms. Evans did not care about any of this, nor my selfless attempt to protect Linda Serbin's attorney client privilege. A22-A23.

C. 1998 Ex Parte, Secret Hearing

Throughout the proceedings below from September 1996 to February 29, 2000, Fox reiterated , a.) that

he would be glad to cooperate and offered to produce all documents *in camera*, but b.) that Linda Serbin had never made any complaint and did not wish to; c.) that Jon Serbin was not his client; and d.) that in order to defend against the complaint of Jon Serbin to show it was frivolous he would have to disclose the extreme confidences of Linda Serbin, exposing her to ridicule and scorn in the community and prosecution in federal and state criminal proceedings, and making him a witness against his own client. He offered to produce documents **in camera** to protect Linda, to which there was no response. A23.

The Florida Bar prosecutors never replied to Fox's response that Linda Serbin was his only client or his concern for my client's attorney client privilege. After the 11th Circuit Grievance Committee in Miami got Fox's response and did not proceed, the prosecution went shopping in the 17th Circuit. In *April 1997*, the 17th Circuit Grievance Committee issued its subpoena for all client records since the beginning of time. However, after the Committee received the response above, it declined to proceed and closed its file.

In *September 1997*, the prosecution resumed shopping with the 11th Circuit Grievance Committee, with a punitive subpoena for all client records. Fox questioned the validity of shopping for Committees who would issue subpoenas, but again responded as noted above.

The prosecution set a hearing for January 20, 1998 upon "*The Complaint of Jon Serbin.*" No other matter was noticed for hearing, but Fox was required

to appear and defend. However, it was undisputed that Fox had a previously scheduled federal arbitration trial in Seattle, Washington on the same date. Under the standing "*Federal State Administrative Conflict Order*" [subsequently codified as Rule 2.052 FloridaR.Jud.Admin.] Fox made two written requests by letter and motion respectively asking for a delay of three (3) weeks to appear and defend.

The prosecution did not care about Fox's inability to appear and defend. In the hearing transcript on January 20th it was **undisputed** that Fox was in a federal arbitration trial in Seattle, Washington. It was also shown that Linda Serbin's signature had been forged on a one line complaint presented at the January 20, 1998 hearing by Jon Serbin. The prosecutor and Committee decided not to proceed with the Jon Serbin complaint. Instead with only three (3) of eleven (11) members present the Committee and prosecutor met secretly upon the 1997 Grievance Committee (which was not noticed for hearing) and recommended that Fox's license be *temporarily* suspended because of his failure to comply with the 1997 subpoena. Under the "no defense" Rule 5-1.2(f)(1) the Florida Supreme Court declined to review the Petitioner's complaints of the denial of his rights and those of his clients, and referred this case to Referee Siegel to confirm the Grievance Committee recommendation of suspension for failure to comply with the Grievance Committee subpoena.

D. Motion to Disqualify Referee denied under"no defense" Rule

Referee Siegel, decided it was his job to enforce the Grievance Committee subpoena and he did not want to hear about any defects in the subpoena nor the secret, *ex parte* Grievance Committee proceeding, where the recommendation to suspend because of non-compliance with subpoena was generated. A22-A24.

A verified Motion to Disqualify Siegel was filed detailing a long, personal history of competition and political and social rivalry between Paul Siegel and Fox. A23 A24; A81-A85 (Verified Motion to Disqualify). Among many facts, were that Siegel and Fox were political opponents for the judicial position Siegel occupied, up to and including where Fox had sued to prevent Siegel's appointment and to remove Siegel. *Id.* Fox also complained that the Florida Bar prosecutors as agents of the Florida Supreme Court had routinely provided secret propaganda and memoranda on how to prosecute Fox, which were not provided to Fox. A83-A85 (Ex parte contact with Siegel). In sum, the appearance of partiality was palpable and improper. *E.g.*, *Rose v. State, 601 so.2d 1181 (Fla. 1992)(ex parte* contact by a prosecutor with the trier of fact is *insidious* and reversible error). Siegel denied the motion and under the "no defense" Rule 5-1.2(f)(1).

E. Secret Harassment of Represented Client

Fox's only client in this matter, Linda Serbin, had uniformly *refused* to make any complaint and

repeatedly stated to the prosecutors that she did **not** want to make any complaint. Without Linda Serbin's complaint Fox could not and would not defend himself by producing her documents, which would violate her attorney client confidences. Therefore in a clandestine manner *without Fox's knowledge or permission,* for almost two (2) years and without explaining her rights, the prosecutors constantly harassed and badgered Linda Serbin, to make a complaint against Fox, which she consistently **refused** to do. *Compare, Florida Bar v. Feinberg*, 760 So.2d 933 (Fla. 2000)(prosecutor disciplined for contact with represented client).

The prosecutors had filed this cause with the Grievance Committee, the Florida Supreme Court and the Referee, upon the complaint of Jon Serbin. However, they knew the complaint had a fatal defect and was frivolous because Jon Serbin was never Fox's client. Finally, just before the final hearing before the Referee, Linda Serbin caved in to nineteen (19) months of harassment and reluctantly signed a one line statement adopting Jon Serbin's complaint. Linda signed the complaint on *June 5, 1998* the day after Fox had obtained a final judgment for her in the final case relating to her house foreclosure.

Upon being informed of Linda Serbin's one line complaint, Fox promptly reached a settlement of this matter with the Florida Bar's new counsel, Wenzel, which continued to protect his clients' interests. However, the settlement agreement reached by Fox and Wenzel was summarily rejected by Wenzel's supervisor, Sankel at the brief final hearing before the Referee. Fox also bitterly complained as to all

matters recited herein. However, without allowing any further hearing or discussion, the Referee recommended an order of temporary suspension.

As noted above, the **November 24, 1999** order puts control of the temporary suspension entirely in the control of the prosecution where it recites only, that the Florida Bar may file a Notice of Compliance. A1; A77. However, the order requires a hearing in any dispute as to compliance, which occurred in the case at bar, A46-A51 (motion to strike); A53-A55 (Response to claim of non-compliance); A58 (Compliance with Subpoena); A62-A69 (Affidavit to Correct Response of Sankel), but any dispute must be heard by the Referee, Siegel. A78

REASONS TO GRANT THE WRIT

I. Jurisdiction is Ripe for Review

On October 2, 2000, this Court denied certiorari without comment. *Fox v. Florida*, U.S. Case No. 99-1887. However, this Court's denial of certiorari was reasonably predicated upon the fact that the Florida Supreme Court's order was *not final* and an *interlocutory,* temporary suspension. *See, e.g., United States v. Ryan*, 402 U.S. 530 (1971)(order enforcing a subpoena is not appealable): *Republic Naural Gas v. Oklahoma*, 334 U.S. 62 (1948)(U.S. Court has no jurisdiction to review non-final state court judgments or decrees); *Market Street Railway v. Railroad Commission of California,* 324 U.S. 548 (1944)(for review by U.S. Supreme Court a state court decision, "must also be final as an effective determination of the litigation and not of merely

interlocutory or intermediate steps therein").

However, in the present appeal, the interminable, unfettered prosecutorial delay beyond any reasonable basis and the Florida guidelines for discipline, and the palpable error in disregarding the requirement of a hearing upon the dispute on compliance, which plainly occurred more than ten years ago, is the continuation of the unconstitutional fabric of the "no defense" Rule 5-1(f)(1) and the lack of separation in the roles of prosecutor, judge and fact finder in Florida's attorney discipline system. A27-A32. In the present cause, the Florida Court's order of denial of the motion to vacate and reinstate is final and no further remedy is available upon1999 order of temporary suspension. *See*, A1. This cause is therefore ripe for review.

The Petitioner's complaints about what would be plain error by prosecutors in any other case, had no effect upon the rigged, clandestine apparatus of Florida's attorney discipline system, and its stealth use of the "no defense" Rule 5-1.2(f)(1) to ignore complaints of outrageous prosecutorial misconduct and denial of fundamental federal rights. Instead, the Florida system protects chronic abuse of the Court's power and prosecutorial misconduct. But for, the Florida disciplinary system operated by prosecutors employed as agents of the Florida Supreme Court, who are immune from complaints, and the "no defense" rule, the rules regarding due process and federal rights plainly mandated reversal herein. *E.g., Florida Bar v. Feinberg, supra (contact with a represented client); Rose v. State,* 601 So.2d 1181, at 1182 (Fla. 1992) *(ex parte contact with the*

trier of fact); and *Florida Bar v. Cox*, 794 So.2d 1278, 1282 (Fla. 2001) (*duty of a prosecutor to protect constitutional rights and to seek justice, not convictions*). Indeed, these Florida cases, demonstrate the fundamental errors herein, where the prosecutors' misconduct would be quickly reversed when committed by any other type of prosecutor in any other case. *See, Id.*

II. Conflict Among All States

A. Conflict with Florida's "no defense" Rule

The Petitioner has sought responses from forty-nine (49) states and the District of Columbia. As of the printing of this petition, nine (9) states, California, Wyoming, Tennessee, Missouri, Arizona, Nevada, North Carolina, West Virginia and Louisiana have responded that they do **not** have a "no defense" rule denying all attorneys of all rights in Trust Accounting disciplinary proceedings like Florida. Three (3) states, North Dakota, South Carolina and Montana have responded that they have similar provisions. South Carolina's modified provision, Rule 471(a)(1), allows application of a "no defense" rule depending on each case.

The Florida Supreme Court reenacted the "no defense" provision on 02./01/2010 in Rule 3-7.11(d)(7)(b) Rules of Discipline and it remains unchanged. The "no defense" Rule 5-1(2.1(f)(1) Fla Trust Acct. was enacted by the Florida Supreme Court in 1992, and retroactively applied without notice or agreement upon all attorneys in all cases, including the Petitioner who began his practice in

1975. Florida also applies its rules to attorneys from any jurisdiction who appear in Florida. See, Rule 3-4.1 R.Reg.Fla.Bar (applying rules to attorneys of other states and foreign countries).

B. Conflict Among States that Combined Functions of Prosecutor, Judge and Trier of Fact, as in Florida's attorney discipline system, are Denial of Due Process

Similarly, at least two (2) states, Montana and Pennsylvania, have decided that a system such as Florida's attorney discipline system, which combines prosecutorial, judicial and fact finding functions, violates due process under *In Re Murchison*, 349 U.S. 133 (1955) as discussed below in "Conflict with Federal Precedent," below. *Goldstein v. The Commission on Practice of the Supreme Court*, 2000 Mt. 8, 995 P.2d 923 (Mont. 2000).

This Court therefore has jurisdiction and this case is also an important case to resolve an important conflict among the States where the Florida Court of last resort has improperly decided important federal rights, which directly affects more than twenty-five thousand (25,000) Florida lawyers and tens of thousands of attorneys of other states, which use a similar rule and similar attorney discipline systems. Citizens who are attorneys have more rights than in citizens who are attorneys in Florida and the states which have Florida's "no defense" rule and system. The undersigned who practiced honorably and well since 1975 and prevailed in seven (7) cases on the merits before this Court, A86-A89, is no longer allowed to practice in the state and federal courts or

agencies, in any states because of the unlawful denial of his federal rights and unfettered prosecutorial misconduct in Florida's attorney discipline system. There is no other remedy for the conflict among the states and the taking of federal rights, except review by this Court and this is an important issue this Court should decide.

III. CONFLICT WITH FEDERAL PRECEDENT

A. Conflict with Federal Precedent and the States that Florida attorney discipline system is unconstitutional

Unfettered prosecutorial misconduct in the Florida attorney discipline system and the lack of review and improper exercise of the Florida Supreme Court's power, is the result of the unconstitutional lack of separation between the functions of the Florida Lawyer Disciplinary system. Thus, in Goldstein v. Commission on Practice of the Supreme Court, 2000 Mt. 8, 995 P.2d 923 (Mont. 2000) the Court was confronted by the issue presented to this Court, which occur because of the lack of separation between the Florida Supreme Court and the Florida Bar. In reviewing the necessity of separating the functions of prosecutor, fact finder and judge in disciplinary proceedings, the Goldstein court concluded that:

> "[T]he Pennsylvania Supreme Court, relying on the U.S. Supreme Court's decision in *In Re Murchison* (1955), 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942,

> expressly ruled that the combination of the functions of prosecutor, judge and jury in an attorney disciplinary proceeding violated due process."

995 P.2d at 941. In the case at bar, the Florida Bar attorneys serve in judicial, prosecutorial and fact finding roles, and they are immune from review as, "arms of the Florida Supreme court." *See, Mueller v. The Florida Bar, supra, The Florida Bar v. Lewis*, 358 So.2d 897, 899 (Fla. 1st DCA 1978), R.Regulating Fla. Bar 2-3.1. The palpable misconduct herein, which the Florida Supreme Court would not tolerate in any other prosecutor, e.g., *Florida Bar v. Feinberg, supra (severe discipline* for contact with a represented client); *Rose v. State (reversal for ex parte* contact with the trier-of-fact)*; Florida Bar v. Cox, infra* (the duty of a prosecutor to is seek justice and protect constitutional rights), exists with impunity herein, because the implementation of the power of the Court by its employees goes unchecked and because there is no separation between the Court and the Florida Bar.

The Florida Bar prosecutors acts and malfeasance herein are unconstitutional and a contradiction of the duty of a prosecutor to protect constitutional rights and to seek justice. *Id.* Abuse of power which is not subject to review and the lack of separation between the Florida Supreme Court and the Florida Bar is a denial of due process. *In Re: Murchison, 349 U.S.* 133 (1955); *Goldstein v. Schlesinger*, 172 A.2d 835 (1961).

Similarly, *United States v. Berger*, 295 U.S. 78, 88

(1935), the Court explained it is the duty of the Court to act in the face of misconduct by prosecutors:

> "[W]hile [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just one."

In the Florida attorney discipline system, prosecutors are immune from scrutiny as agents and "arms" of the Florida Court and strike foul and illicit blows with impunity. Under *United States v. Berger,* the Florida attorney discipline system is unlawful where there is no scrutiny of prosecutorial misconduct. In Florida and states which use the same system and "no defense" rule, prosecutorial misconduct never sees the light of day as required by *Berger* and never reaches this Court.

Finally, there is another more subtle, insidious, effect upon due process and equal rights, arising from the lack of separation of roles in the Florida attorney disciplinary system. On August 21, 2008 the Petitioner filed his Rule 2.140(a)(1)Florida Rules of Judicial Administration, Petition to reform the "no defense" Rule 5-1.2(f)(1) and Rule 2-3.1 of the Rules Regulating the Florida bar, the lack of separate functions of prosecution, judicial, and fact finding in the Florida attorney discipline system.

Under the mandatory language of Rule 2.140(a)(1) the Clerk was supposed to forward such a petition to Florida Bar Committees. *See, e.g, "Attorney Client*

Task Force to Study Government Lawyering," Florida Bar News, 10/01/07, p. 9; *Florida Commission of Reform of Florida Bar Discipline*, The Palm Beach Post, March 4, 2004, p12A; *Lewis Commission on Professionalism*, Florida Bar News, 01/01/10. Instead, the Clerk of the Florida Court instead forwarded Fox's petitions to the Florida Bar, which promptly put them in the trash can, because of. his complaints of prosecutorial misconduct herein.

B. Conflict with Federal Precedent that Attorneys Do have Constitutional Rights

This is also an important case for this Court to consider whether lawyers, like ax murders, are entitled due process and equal protection. See, Brewer, W., "Due Process in Lawyer Disciplinary Cases: From the Cradle to the Grave," 42 South Carolina Rev. 925 (1991). State and federal courts are conflict as to whether lawyers are entitled to due process and equal protection. Id. *Brewer* explains the dilemma, thus:

> "The underlying goal of disciplinary proceedings is to protect the public from unfit lawyers and maintain the integrity of the entire legal system. Lawyers are not subject to disciplinary proceedings in order to be punished. Their licenses to practice cannot be withdrawn capriciously. Thus, they are entitled to some measure of procedural due process." *Id.* at 941.

Thus, in *Spevak v. Klein*, 385 U.S. 625 (1967) an

attorney was disciplined by the New York Court because he refused to produce financial records and to testify at a judicial proceeding on the basis that the production of records and his testimony would tend to incriminate him. In reversing the state court, the *Spevak* court explained that attorneys are citizens too and are entitled to constitutional rights:

> "The threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege. That threat is indeed as powerful an instrument of compulsion as the 'use of legal process to force from the lips of the accused individual the evidence necessary to convict him.' * * * Lawyers are not excepted from the words, 'No person * * *shall be compelled in any criminal case to be a witness against himself'; and we can imply no exception. * * * Lawyers also enjoy first-class citizenship." [Citations omitted]. 385 U.S. at 516.

Spevak v. Klein provides the jurisdictional conflict with the precedent of this Court, that lawyers *are* entitled to due process and equal protection and to be protected from prosecutorial misconduct, as in the case at bar. Therefore, the provision of the "no defense" Florida Rule 5-1.2(f)(1) and its identical successor rule, is plainly unconstitutional, where it denies all lawyers all rights in a disciplinary matter.

C. Unconscionable and Arbitrary Delay is Denial of Due Process and Equal Protection

The Florida Bar has long standing guidelines for how long a disciplinary proceeding should go on. *See,* A17-A18. The guidelines serve as a bench post for the continued, abusive, unconscionable delay herein for more than fourteen (14) years upon the frivolous complaint of Jon Serbin, and the unlawful 1997 Grievance Committee subpoena, which was resolved by the Grievance Committee which issued the subpoena at the hearing on *February 29, 2000.* The present complaint should have been about two hundred and forty (240) days from the time of Jon Serbin made the complaint in 1996. *See*, A17-A18; *Report of the Special Commission on Lawyer Regulation* (April 18, 2006). Instead, the grievance procedure and temporary suspension in this cause lurched on for four years and then has been recklessly and deliberately ignored for more than ten (10) years. The reason for such abuse is that the Florida Bar attorneys are agents employed by the Florida Supreme Court whose intimacy with the Court is such that they have been designated, "arms of the Florida Supreme court," and are immune from claims of misconduct and claims of violations of due process and equal protection *E.g., Mueller v. The Florida Bar*, 390 So.2d 449, 451 (Fla. 4th DCA 1980).

Coextensive with the lack of separation is the "no defense" Rule 5-1.2(f)(1) as reenacted by the Florida Supreme Court on 02.01.2010, where Fox and all respondents have no rights to review anyway. The denial of Fox's rights has been extended to the unconscionable delay herein, which is apparent by

even a casual examination of Florida Bar punishment herein, where the Bar arbitrarily provides excuses for, reinstates and rehabilitates liars, thieves, and drug abusers in a minute fraction of the time it has continued to impose punishment upon the Petitioner, who sought only to protect his clients' confidences. *Compare, e.g., Florida Bar v. Thomas,* 698 So.2d 530 (Fla. 1997)(three (3) months suspension for stealing); *Florida Bar v. Corces*, 639 So.2d 604 (Fla. 1994)(two year suspension for taking $6,755 from client).

Moreover, after the 11I Committee hearing on February 29, 2000, where the only records available were produced and the prosecutor's own auditor said there was nothing to suggest the undersigned had done anything improper, the Florida Bar attorneys have unconscionably delayed and ignored due process herein for more than ten (10) years··· far beyond any reasonable or prudent purpose or any Florida Bar precedent of any kind.

In denying the present petition, the Florida Court elected to do nothing about the unconscionable delay even though this cause is *far* beyond any Court approved guidelines. Such extraordinary, unconscionable delay is a denial of fundamental due process and equal protection of rules otherwise allowed for liars, thieves and drug addicts, which the Florida Bar routinely allows to be promptly reinstated in a small fraction of the time.

Fox enjoys first class citizenship did not check his rights at the door when he became a lawyer in 1975. As the keepers of the faith, lawyers should be

entitled to rights as citizens. Summarily depriving lawyers as a class of all rights is unconstitutional as a denial of due process and equal protection within the meaning and intent of the decisions of this Court as illustrated and specifically applied to lawyers in **Spevak v. Klein**. The fiction that all lawyers have no rights just because they are lawyers, more importantly results in the denial of clients' rights. The fiction that all lawyers waived all their rights retroactively in 1992 when Rule 5-1.2(f)(1) was adopted by the Florida Supreme Court is in conflict with constitutional rights in this Court's precedent.

This cause therefore affects significant population of citizens and these important issues should be decided by this Court upon the conflict with **Spevak v. Klein** and the precedent of this Court and the United States Courts of Appeal.

D. Conflict with Federal Precedent upon the Taking of the Right to Work without Due Process

This Court has long also recognized the severity of capriciously depriving a person of the means of livelihood. Cleveland v. Loudermill, 470 U.S. 532, at 543 (1985); Fusari v. Steinberg, 419 U.S. 379, 389 (1975); Bell v. Burson, 402 U.S. 535, 539 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance, 395 U.S. 337, 340 (1969). In this case, the Petitioner's sacrifices of his career and his family in order to protect against Florida's unlawful practices and reckless disregard for the attorney/client privilege and Florida's denial of **fundamental due process** has mortally wounded both his **personal** and **professional** life and a career in any other profession,

and has destroyed his health.

Consistent with federal law, Florida purports to create a property right in a professional license, which may not be taken without due process under the state and federal constitutions. See, *Delk, D.D.S v. Department of Professional Regulation*, 595 So.2d 966, at967 (Fla. 5th DCA 1992); *Woods v. Department of Transportation*, 325 So.2d 25, at 26 (Fla. 4th DCA 1976). The prescribed standard of due process in administrative proceedings against a professional license in Florida is identical with the federal standard.*DelkD.D.S. v. Department of Professional Regulation*, 595 So.2d at 967. Following this basic tenet, the due process standard for notice is identical to the federal constitutional standard. *See, Woods v. Department of Transportation* 325 So.2d at 26, *citing*, *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Under federal law, the taking of the Petitioner's means of livelihood without fundamental due process was *manifestly unlawful.* **See**, *Cleveland v. Loudermill*, 470 U.S. 532(1985). In *Loudermill*, where the Petitioners had lost their livelihood without being able to defend at a hearing this Court explained that the rights infringed upon were based upon minimum federal due process rights. 470 U.S. at 541. This Court in *Loudermill* further explained that the right to due process is guaranteed by the constitution and not by the **process** for the deprivation of life, liberty or property rights. 470 U.S. at 542. In affirming the requirement of a hearing ordered by the courts below, the *Loudermill* court explained that:

> "An essential principal of due process is that a deprivation of life, liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. We have described the root requirement of the Due Process Clause as being that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.[Citations omitted]" *Id.*

The Court in *Loudermill* therefore held that the right to work, like the license of the undersigned in the case at bar, once conferred is a vested property right, which, may not be taken without a showing of misconduct and a meaningful opportunity to a hearing; and in the absence of these elements, the taking of the right is a denial of **fundamental due process**. See,Friendly, *Some Kind of Hearing,* U.Pa.L.Rev. 1267, 1281 (1975).

Under *Loudermill* and the foregoing authority, this Court should accept jurisdiction herein, where, Florida, by providing a hearing, at which the Petitioner had to defend his license and right to a livelihood, which he could not attend, denied the Petitioner a meaningful right to be heard and therefore **manifestly** denied the Petitioner his right to **fundamental due process**, the merits of which is reflected in the result on *February 29, 2000*, when the Petitioner was allowed to defend against the taking of his license and the same Grievance Committee which had issued the subpoena, found that the Petitioner had done anything wrong and closed its file.

E. Conflict with federal Precedent upon the Chronic Denial of the Attorney Client Privilege

Because they are agents of the Florida Supreme Court employed with immunity from the claims for which any prosecutor in any other case would be reversed and reprimanded, the prosecutors in the case at bar had utterly no concern for the attorney/client relationship, nor concern for the protection of the attorney/client privilege. Thus, in the case at bar, Fox's client became a target for secret interrogation without notice or regard for the Fifth Amendment or attorney/client rights of either of Fox's clients.

Therefore, an important issue the exercise of this Court's consideration herein is also conflict with settled federal precedent, where the Florida Bar attorneys' recklessly disregard, with impunity, the attorney/client privilege, simply because the prosecutors are going after Fox, an attorney. *Compare, e.g., Swidler & Berlin v. United States,* 524 U.S.399 (1998). In *Swidler & Berlin*, the petitioners had, as in the case at bar, sought to quash grand jury subpoenas seeking the notes of a attorney/client conference of an attorney, who was deceased. This Court reversed the Court of Appeals order for disclosure of said notes, because of the sanctity of the attorney/client privilege and its essential to the concept of "*full and frank communication*" for attorneys and their clients. *See, also, Upjohn v. United States*, 449 U.S. 383, 389(1981). This Court in *Swidler & Berlin v. United States* concluded that sanctitiy of the attorney/client privilege extends even beyond the grave. *Id.*

In Florida, the attorney client privilege is supposed to applies to all communications whether the attorney is hired or not, *Kier v. State*, 152 Fla. 389, 394, ll So.2d 886, 888 (l943); the privilege is supposed to be waived only by the client, *Schetter v. Schetter*, 239 So.2d 51, 52 (Fla. 4th DCA 1970); a lawyer is supposed to raise the claim of privilege to protect his client, *Seaboard Air Line Ry v. Parker*, 65 Fla. 543, 62 So. 589 (l913); once raised, the burden of showing that the privilege does not apply is supposed to be *upon the party seeking disclosure*, *Haskell Company v. Georgia Pacific Company*, 684 So.2d 297 (Fla. 5th DCA l996); and the court is supposed to conduct an *in camera* hearing to protect against violations of the privilege, Del *Carmen Calzon v. Capital Bank*, 689 So.2d 279, 281 (Fla. 3d DCA l995). Finally, where an attorney has been *accused by his client of wrongful conduct*, the attorney may *then* defend against such accusation without an express waiver of the privilege. *Wilson v. Wainwright*, 248 So.2d 249 (Fla. 1st DCA l971).

Notwithstanding the foregoing substantive law and this Court's views in *Swidler & Berlin, supra*, under the "no defense" Rule 5-1.2(f)(1) and the lack of separate roles in the Florida system of prosecutions of attorneys as in the case at bar, the Florida Bar prosecutors recklessly disregard this Courts' precedent and instead try to bully and coerce attorneys as in the case at bar, into saving themselves and abandoning the sanctity of their client's confidences. The merits of the foregoing substantive law and this Court's precedent, which was supposed to establish an order way to protect the attorney client privilege, was amply demonstrated in the case at bar, on *February 29, 2000*, when Fox was for the first time relieved of the

attorney/client privilege and allowed to defend against the taking of his livelihood. It was wholly apparent to the Grievance Committee that Jon Serbin's claim was ***frivolous,*** but that Fox should *not* have disclosed Linda Serbin's attorney/client confidences, without a waiver by Linda Serbin of her confidences, because he would have unlawfully and unethically exposed his client to ridicule and scorn in her community, making Fox a witness against his own client in her divorce and in state and federal criminal and civil proceedings against her. **See**, A70-A-76 (contract with Serbin).

Instead of defending himself, Fox sought to preserve and to protect that greatest traditions of our profession, the attorney/client privilege. *See, also*, Florida Ethical Opinion 92-5 (*recommending that Florida attorneys resist administrative subpoenas to protect the confidences of Florida attorneys' clients*). Instead, the "no defense" rule and the reckless abuses of prosecutorial misconduct has resulted in the unlawful taking of his right to work and has made a sideshow of his clients' rights to their attorney client confidences.

SUMMARY OF JURISDICTION

First, this Court should also accept this case because the prosecutorial misconduct and denial of fundamental due process herein broadly affects protected federal rights of attorneys and their clients appearing in state and federal systems and there is a conflict among the States, created by the Florida Court of last resort, which only this Court can remedy.

Secondly, the Florida Court has wrongly decided important fundamental federal rights in enacting and

reenacting the "no defense" Rule 5-1(f)(1) and the Florida disciplinary system combining the roles of prosecutor, judge and jury, and thereby fosters the unfettered abuse of the Florida Court's power and prosecutorial misconduct, with impunity and conflicts with decisions of this Court and the Courts of Appeal and the majority of other state's disciplinary systems.

Third, this Court should accept this case, because of the conflict among the states, which only this Court can remedy and the error herein recurs and yet evades review, because of the very nature of the illegality imposed. Thus, if Florida succeeds in coercing an attorney to give up his clients' confidences in the attorney's own self-interest, nobody in the legal system will present it for review by this Court. If Florida does not succeed, the attorney without a livelihood has neither the means, nor the ability to present this matter for review by this Court.

Fourth, this Court should accept this case, because Florida's official practices and policies, allowing unreviewed prosecutorial misconduct and denial of due process, void the attorney/client privilege and deny protected fundamental federal rights in conflict with the decisions of this Court and the Courts of Appeal and the majority of state disciplinary rules. In no other area of the law is such denial of fundamental federal rights and the attorney/client privilege allowed. This Court should accept this case, because there is no other Court available to remedy the chronic ill created by Florida and it recurs again and again without remedy or review by this Court.

Fifth, under the Florida Court's "no defense" Rule 5-

1.2(f) and the lack of separate the functions in the Florida system, the Florida Court to routinely enters form orders prepared by the prosecutor, denying attorneys all rights afforded all litigants Rules 9.300(b) and 9,340(b) to stay and rehearing, which are a denial of fundamental federal rights and the equal protection and due process afforded all other citizens.

Finally, this Court should act as a Court of last resort, where the denial of federal rights herein occurs again and again, without review by this Court and the denial of federal rights broadly affects all attorneys and their clients, whose right to work in the federal and state courts in all jurisdictions are uniquely affected and is an issue this Court should decide.

CONCLUSION

The effect of the present unlawful and unfair circumstance upon the Petitioner and others is particularly prejudicial, where the great dilemma of our time is the freedom of information on the internet, but where everything is permanent, no matter, how wrong, or the affect upon jobs, families and lives. *See, The End of Forgetting,* New York Times Magazine, July 25, 2010, p 30.

The present dismissal is final and Petitioner has no other remedy to correct the denial of important federal rights and the unlawful taking of his right to make a living, no matter how wrong. Although, the Petitioner has attempted to take the high road and defend his clients' rights to their attorney client privilege, that effort has been met with abuse and contempt by prosecutors of the Florida Bar.

It has not been possible for the Petitioner to bear this burden without the belief that this Court eventually would uphold the effort to protect the most noble tradition of the profession, the attorney client privilege, and the rights of all attorneys and their clients.

The Petitioner was admitted to practice on May 22, 1975 and has been an honorable and productive member of his profession and community. **See**, e.g., A86-A89 (Fox Vitae). When called upon, the Petitioner successfully prosecuted the rights of the citizens of Florida in more than 700 cases on appeal and before this Court on the merits in Strickland v. Washington, 466 U.S. 668(1985)(standard for ineffective counsel);Rider v. Florida, 470 U.S.1075(1985)(common law immunity for spousal rape); Florida v. Rodriguez, 469 U.S. 1(1984)(second appearance for same case on articulable suspicion); Florida v. Zafra, 463 U.S. 1202(1983)(searches of boats); Florida v. Rodriguez, 461 U.S. 940(1983)(rehearing granted; cert. Granted, reversal of per curiam state decision); Florida v. Royer, 460 U.S. 491(1983)(drug courier profile); and Chandler v. Florida, 449 U.S. 560 (1981)(cameras in the courtroom) . *Id.*

After dedicating his career and life to doing what is right for the people of Florida and his community, the Petitioner should have been in the prime of his career, providing for his family and enjoying the fruits of an honorable career and good health. Instead, unfettered prosecutorial misconduct and the denial of his fundamental constitutional rights and the rights of his clients have mortally wounded the Petitioner and

members of his family. The only light remaining at the end of this dark episode is that this Court will accept this important case, which affects many citizens in many states and allow the Petitioner one more time to argue what is right.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that this important Petition for Certiorari be granted and that this cause will be reviewed on the merits.

CALVIN DAVID FOX
160 Barbados Drive
Jupiter, Florida 33458
(954) 383-5943

APPENDIX TO BRIEF ON JURISDICTION

SUPREME COURT OF FLORIDA
Thursday, May 27, 2010
Case No. SC08-1328
Lower Tribunal No(s).: 2009-50,075(11I)

THE FLORIDA BAR vs. CALVIN DAVID FOX
Petitioner(s) Respondent(s)

Respondent's "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc" is hereby dismissed.

All other pending motions and requests for relief are hereby denied.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

Thomas D. Hall
Clerk, Supreme Court
Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX

SUPREME COURT OF FLORIDA
July 14, 2008
Case No. SC08-1328
Lower Tribunal Case(s) j2009-50,075(11I)

[EXCERPT OF DOCKET ENTRY}:

Please understand that once this case is dismissed, it is not subject to reinstatement.

SUPREME COURT OF FLORIDA

Thursday, August 19, 2010
Case No. SC08-1328
Florida Bar File No.: 2009-50,075(11I)

THE FLORIDA BAR vs. CALVIN DAVID FOX

Petitioner(s) Respondent(s)

The Respondent's Motion for Rehearing is hereby denied. See, Fla.R.App.P. 9330.

The "Lower Tribunal No." in the style of the order dated May 27, 2010, refers to the Florida Bar File Number assigned to this proceeding.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

Thomas D. Hall
Clerk, Supreme Court

Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX

THE FLORIDA BAR
651 East Jefferson Street
Tallahassee, Florida 323-99-2300

John F. Harkness
Executive Director

April 28, 2004

Mr. Calvin D. Fox
217 Marlberry Circle
Jupiter, Florida 33458

Re: Your letter of April 15, 2004 to Ms. Johnson [Member of Florida Commision on Reform of Florida Bar Discipline]

Dear Mr. Fox:

It is true that I have not personally responded to your letters. However, I am advised that others have communicated with you and I note that your letters present no suggestion for relief that the bar may grant.

You are suspended by order of the supreme court (sic) and you may be reinstated only by a subsequent order of that court. Even if the bar agrees with your analysis of your situation, we cannot grant your reinstatement. So, if you want to be reinstated you must file a petition for reinstatement with the supreme court (sic) and the bar will make an analysis of your averments and respond as appropriate at that time.

I do not represent that the bar will take any particular position. The bar will reserve the right to reply as appropriate, based on the matters presented in any petition that you chose to file.

Sincerely,
John Anthony Boggs
Director, Legal Division

IN THE SUPREME COURT OF FLORIDA

CALVIN DAVID FOX,

Petitioner/Respondent,

vs.

THE FLORIDA BAR,

Respondent/Complaintant.

CASE NO. SC08-1328
Formerly Case No. 92,484

VERIFIED PETITION TO VACATE ONGOING, DAILY, TEMPORARY SUSPENSION FOR LAWFULLY REFUSING TO COMPLY WITH SUBPOENA, **NUNC PRO TUNC**.

_____/

COMES NOW, the Petitioner, CALVIN DAVID FOX, by and through his own counsel, and petitions this Court in Case 92,484 to vacate the present interlocutory order providing for a day to day, temporary suspension of the Petitioner upon his **lawful** refusal to comply with a 1997 Florida Bar Subpoena, **nunc pro tunc** to November 24, 1999, to wit:

JURISDICTION

This Court has jurisdiction to control its interlocutory orders.

PRELIMINARY STATEMENT

On **November 24, 1999**, this Court entered its interlocutory order using a Florida Bar form order, temporarily suspending the Petitioner's license, for the Petitioner's failure to comply with a September 22, 1997 subpoena at an **ex parte** hearing, which the Florida Bar's complaint to this Court said was on **January 20, 1992**. **Composite Exhibit A**. Said hearing, which was on January 20, 1998, was noticed for hearing upon the, "Complaint of Jon Serbin." **See, Id.** The subpoena was not mentioned. The Notice only required that the Petitioner testify and produce documents upon the, "above-captioned complaint [of Jon Serbin against Calvin D. Fox]":

"Subject: Complaint of Jon Serbin against Calvin D. Fox

* * *

"You are requested to attend and give testimony. You are also requested to bring with you any and all documents and files in your possession pertaining to the above-captioned complaint"

Exhibit A. As a predicate for said hearing, Jon Serbin presented a one line "statement", purported to be signed by Linda Serbin, which was later determined to be forged. Said Notice also provided that the Petitioner could raise any, "privilege or right properly available to the [Petitioner] under applicable federal or state law." **Id.** The transcript of hearing for January 20, 1998 reflects that both Jon Serbin and the Grievance Committee were completely confused by what Jon Serbin's claim

actually was based upon. Therefore at the end of the hearing, they met secretly and then announced that the Petitioner would be suspended because of his failure to appear and present documents for the September 22, 1997 11th Circuit subpoena. No mention was made as to the Petitioner's Response and Motion for a Protective Order. After a previous identical subpoena, by the 17th Circuit Grievance Committee, the 17th Circuit Grievance Committee declined to proceed and closed its file after receiving the Petitioner's response and Motion for a Protective Order. On **February 22, 2000**, this Court denied a Motion for Rehearing; Motion to Present Documents **in Camera** etc. **Id**.

A week later, on **February 29, 2000**, with Gregg Wenzel, new Florida Bar counsel, the same 11th Circuit Grievance Committee, which had recommended the temporary suspension at the **ex parte** January 20, 1998 hearing upon which this Court's November 24, 1999 order is based, conducted an evidentiary hearing. **For the first time**, the Petitioner was allowed to appear, testify and produce Serbin's documents. It is undisputed that the Serbin complaint was shown to be **frivolous**. The same Committee therefore unanimously found that there was no probable cause to believe the Petitioner had done anything unethical and closed its file. **Exhibit B**.

For more than nine (9) years, the Petitioner has asked six (6) times---joined by the President of the Florida Bar on two (2) occasions----that the Florida Bar review the circumstances of the unfair taking of the Petitioner's law license and the admittedly **frivolous** Serbin complaint. In its first response, on **January 29, 2002**, the Florida Bar did

not dispute that the Serbin complaint was frivolous, but said it, "could not commit to a particular resolution . . ." **Exhibit N**. On **April 28, 2004** the Florida Bar again would not commit to, "any particular position . . ." **Id.**

As a consequence, the Petitioner has remained temporarily suspended for almost nine (9) years upon this Court's interlocutory order, which was predicated upon a frivolous complaint, which was pursued in violation of the most fundamental rules governing the conduct of counsel. Meanwhile, the Bar enthusiastically pursues programs and agrees to reinstate and rehabilitate liars, thieves, and drug abusers in a fraction of the same time.

Most importantly, the ongoing, day to day, temporary suspension of the Petitioner for almost nine (9) years was for doing only that which he was duty bound to do by the **Oath of Admission** and Florida Bar's Ethical Opinions say he should do---- resist administrative subpoenas to preserve and protect his client's confidences, even at his own peril. There was no public purpose ever served by the Petitioner's temporary suspension on November 24, 1999, nor has there been any public purpose served by the Florida Bar's cavalier disregard for the temporary suspension for almost nine (9) years. In this circumstance, an unfair suspension upon an interlocutory order, prompted by a frivolous complaint has gone un-reviewed since January 20, 1998.

PERSONAL STATEMENT

Your Petitioner has nothing but the highest respect and admiration for this Court and the Florida appellate courts as the most accessible and conscientious Courts in the United States. Nothing

in this or any other petition should be construed to the contrary. Your Petitioner, Calvin David Fox, Florida Bar No. 192098, was admitted to the Florida Bar on **May 22, 1975**. The Petitioner was a contemporary of Justice Quince in the Florida Attorney General's Office. However, after serving the people of Florida and the private sector for more than twenty-four (24) years, the Petitioner cannot get a job as a toll booth attendant because of the present circumstance. Notwithstanding this unlawful temporary suspension, each year for almost nine (9) years, the Petitioner has continued to pay bar dues and to keep his Continuing Legal Education credits up to date. Moreover, despite the injustice herein, the Petitioner has continued to be an extraordinary and conscientious member of his community. **E.g.**, **Composite Exhibit F**. Although **unemployed** since February 7, 2000 because of the circumstances herein (except for one temporary, part time job in 2007), he has maintained an excellent reputation for integrity, moral character and work ethic. **Id.**

Justice Lewis may appreciate that the Petitioner's legal skills and ability before the state and federal courts are widely respected. **E.g.**, **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1985)(**reversing** the U.S. 11th Circuit sitting **en banc**, setting standard for review of ineffective counsel claims); **Florida v. Royer**, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(**reversing** the Florida Third District sitting in the first **en banc** case in Florida, upholding use of profile for drug couriers); **Chandler v. Florida**, 449 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(**reversing** fifty (50) years of federal precedent and establishing the right of the people to view trials

through cameras in the courtroom); **Florida v. Rodriguez**, 463 U.S. 940, 103 S.Ct. 3529, 77 L.Ed.2d 1298 (1983)(**reversing** one line, **per curiam** opinion, after granting rehearing of denial of certiorari); **Florida v. Rodriguez**, 469 U.S. 1, 105 S.Ct. 3529, 83 L.Ed.2d 165 (1984) (**reversing** same case again when State court failed to follow previous reversal); **State v. Benitez**, 395 So.2d 514 (Fla. 1981)(**reversing** hundreds of cases statewide which had declared Section 893.135 Fla. Stat., the new "trafficking" statute, unconstitutional); **State v. Allen**, 362 So.2d 10 (Fla. 1978)(**reversing** hundreds of appellate and trial cases, which declared Section 812.014 Fla.Stat., the new "theft statute," unconstitutional).

On May 22, 1975, I started the practice full of complete faith and belief that **truth** and **justice** would **always** prevail. I was the kind of person, who would stand at attention in an empty room with his hand over his heart, when television stations used to sign off the air. In 1962 I saw *"To Kill a Mockingbird"* (Universal 1962) with my father and decided then and there that I wanted to be a lawyer. That desire has continued, notwithstanding the manifest failings of the system in the case at bar.

In **In Search of Atticus Finch** (2d Ed. 1997) at page 131 the author laments that the profession has been greatly diminished by self-interest and the loss of the most noble standards of our profession, which the author describes as:

> "[t]he lack of a pervasive sense of mission by individual lawyers, the absence of a sense of rightness and righteousness that transcends self-interest and commercialism, the loss of a sense of calling, an idealism as in a vocation, that gives all of our labors its dignity."

See, also, Angones, F., "Developing a Moral Conscience," President's Page, Florida Bar Journal (Sept. 2007). However, as reflected in the defense of my client's confidences herein, at all times it has always been that "**lack of self-interest**," "**sense of rightness**" and "**sense of calling**," which I have followed to guide my efforts for the people of Florida and for my private clients. These standards were the motivation for protecting Linda and Bess Serbin's attorney-client confidences, but have resulted in the denial of their rights and mine, and the unfair, and forgotten suspension of my license and terrible consequences for me and my family. Enduring the pain of reviewing these facts, the undersigned still has faith that the system works.

I. STATEMENT OF PROCEDURAL HISTORY UPON JON SERBIN'S 1996 COMPLAINT

The following recitation of verified facts and circumstances is fully supported in the written record before this Court and the Florida Bar:

As noted, in Florida Supreme Court Case No. 92,484 this Court temporarily suspended the Petitioner on an ongoing, day to day basis, for failing to comply with an 11th Circuit subpoena at an ex parte hearing on January 20, 1998, which was noticed for hearing upon the complaint of Jon Serbin, but not the subpoena. The Petitioner filed a verified response to Evan's incompetent complaint to this Court, which incompetently alleges that the hearing occurred on January 20, 1992. In his response, the Petitioner reiterated his good faith to cooperate and to produce documents. Composite Exhibit A. Jon Serbin's

garbled **September 10, 1996** complaint was that the Petitioner had kept a portion of funds, which he vaguely explained were related to the 1993 fire sale of Linda Serbin's house, after the Petitioner had prevented it from being foreclosed.

Initially, after receiving the Petitioner's response, the 11th Circuit Grievance Committee did not issue any subpoena and did not proceed. This cause was then transferred by Florida Bar Counsel, Elena Evans, to the 17th Circuit Grievance Committee. The 17th Circuit Grievance Committee **issued** a subpoena, but after receiving the Petitioner's response and Motion for a Protective Order, **declined** to enforce the subpoena and closed its file. The Petitioner responded before both the 17th Circuit Grievance Committee and 11th Circuit Committee that the Petitioner's only client, Linda Serbin, had **not** made any complaint and had **not** joined in the written complaint of her estranged husband, who was **not** the Petitioner's client. Furthermore, the Petitioner also responded that he could **not** comply with the subpoena without violating Linda's (and her daughter's), confidences and subjecting Linda to criminal and civil prosecution, and Linda did **not** waive her right to her confidences.

My concern for my client's confidences from 1996 to June 6, 1998 was well founded in the Florida Bar Oath of Admission, **e.g.**, **The Florida Bar Journal** (Sept. 1999) p. 713; Florida Bar Ethics Opinion 92-5; and the substantive law, **see**, **Doe v. The Supreme Court of Florida**, 734 F. Supp. 981, at 988 (S.D. Fla. 1990). In the Oath of Admission, all lawyers swear they will defend their client's confidences, even at their own peril. Ethics Opinion 92-5 therefore

specifically recommends that attorneys should resist any administrative subpoenas to protect their client's attorney-client privilege. Additionally, in **Doe v. The Supreme Court of Florida**, the Florida Bar's confidentiality rule in Bar proceedings was struck down. Therefore, between 1996 and 1999, without a waiver of her rights, Jon Serbin and state and federal prosecutors could have used the enclosed written contract with Linda Serbin and my testimony to proceed against Linda Serbin. Linda **then** would have had a legitimate, indefensible complaint against me for wrongfully disclosing her confidences. [The Petitioner also offered to comply with the subpoena at all times by providing information **in camera**, which was ignored by the 11th Circuit Committee and denied by this Court on February 22, 2000, when this Court denied the Motion to proceed **in camera**. **See**, **Exhibit A**. However, at the status hearing on June 10, 1998 the Referee was eager to review documents **in camera**, which would have concluded this matter then and there. However, Wenzel's supervisor, Sankel, promptly stepped in and objected to proceeding **in camera**, although Sankel had no idea what she was objecting to].

Notwithstanding the Petitioner's response, Evans caused the 11th Circuit Committee to reissue the same subpoena and to schedule a hearing on **January 20, 1998**, to get the Serbin documents. The notice for said hearing **required** the Petitioner to testify upon, "the complaint of Jon Serbin," and to produce the Serbin documents in order to defend against the taking of his license. However, at the hearing on January 20, 1998 it was **undisputed** that the Petitioner was at a previously scheduled federal

trial in Seattle, which took precedent over the Florida Bar hearing. **See**, Rule 2.052 Fl.R.Jud.Admin. (codification of the 11th Circuit Conflict Order). With only three (3) of eleven (11) members present, the 11th Circuit Grievance Committee ignored the Petitioner's two (2) timely requests to reschedule the hearing three (3) weeks later until he could return to defend against the suspension of his license, testify and produce the Serbin documents. As reflected in the transcript, Jon Serbin's testimony was confused and garbled. Therefore, after conferring secretly, the Grievance Committee recommended suspending the Petitioner upon the Petitioner's failure to comply with its September 22, 1997 subpoena and not upon the matter noticed for hearing----the Complaint of Jon Serbin. There was, however, no mention of the Petitioner's timely Motion for a Protective Order.

Based upon said **ex parte** Grievance Committee hearing, this Court summarily issued an order to appoint a referee. The Referee, Paul Siegel, had manifest conflicts of interest and was contacted **ex parte** and provided cases and information on how to decide this cause, which were not provided to the Petitioner. **Exhibit G** (Verified Motion to Disqualify). The Referee conducted a status hearing on June 10, 1998 and a settlement hearing on August 14, 1998, which collapsed when Sankel refused to go along with the settlement Gregg Wenzel had reached with the Petitioner. Upon the Referee's recommendation for suspension, on **November 24, 1999** after receiving briefs, but without oral argument, this Court summarily issued the Florida Bar interlocutory order temporarily suspending the Petitioner until he complied with the September 22, 1997 11th Circuit

Grievance Committee subpoena, which was never discussed on the record at the January 20, 1998 Grievance Committee hearing. **See**, **Exhibit A**. Because the Petitioner is a lawyer, the form order also provides that the automatic stay provisions of Rules 9.300(b) and 9.340(b) of the Florida Appellate Rules do not apply as they do for ax murderers, corrupt judges, rapists and thieves. **Id**. Furthermore, the Florida Bar's form order also specifically provides that the order of suspension may **only** be vacated by a filing from the Florida Bar that the Florida Bar's form order has been satisfied. **Id**.

As noted, on **February 29, 2000**, a week after this Court denied rehearing, the Florida Bar, through new eyes----Florida Bar counsel Greg Wenzel, rescheduled the 1998 **ex parte** hearing in order to allow the Petitioner to appear, produce the Serbin documents and defend against the suspension of his license. As noted, on February 29, 2000, the **same** Grievance Committee, which had voted in the absence of your Petitioner to temporarily suspend the law license of the Petitioner, met again upon the Complaint of Jon Serbin. (After almost two (2) years of secret, **ex parte** harassment authorized by Evans on **June 6, 1998**, after this cause was filed in this Court and while this cause was pending before the Referee, and the day after a court hearing with Linda, where the Petitioner had obtained an additional $27,000 for her upon the sale of her house, Linda had also apparently signed a statement adopting Jon's 1996 complaint). Therefore, on February 29, 2000, for the first time the **same** Grievance Committee heard Jon Serbin and Linda Serbin under oath. Therefore, for the first time, the

Petitioner was permitted to testify and produce the Serbin documents and defend against the taking of his license. **See**, **Exhibit H** ("Contract for Legal Services" and "Closing Statement"). The Bar had all bank records, which the Petitioner had been offering to produce **in camera** to both Grievance Committees, the Referee and this Court. **See**, **Exhibit H**. It was wholly apparent to the Grievance Committee that Jon Serbin, who was the serial rapist of his own child, a drunk and a perjurer, had made a **frivolous** complaint against the Petitioner. **Exhibit H**. Therefore, on **March 14, 2000** the Eleventh Circuit Grievance Committee issued its unanimous written finding of **no probable cause** to proceed upon the Serbin complaint and closed its file. **Exhibit B**.

II. FUTILE ATTEMPTS TO RESOLVE SUSPENSION ORDER

1.) On **July 20, 1998**, six hundred and forty-eight (648) days after
Jon Serbin's complaint and one (1) month after the Petitioner was informed that Linda Serbin had been harassed into signing a complaint, your Petitioner wrote an extensive letter to Gregg Wenzel and provided a copy to John "Tony" Boggs, the Director of the Florida Bar Legal Division. **Exhibit I**. Mr. Wenzel and the Petitioner **promptly** agreed to settle this matter. Mr. Boggs never responded. On August 14, 1998 Sankel stepped in and overruled Wenzel's settlement of this cause with the Petitioner.

2.) On **January 16, 2001**, seven hundred and eleven (711) days later, your Petitioner wrote again of the circumstances herein to Todd Aronovitz, President-Elect of the Florida Bar. **Exhibit J**. On

June 5, 2001, Mr. Aronovitz traveled to Tallahassee and met with Mr. Boggs, on behalf of the Petitioner. Mr. Boggs assured Todd that the Petitioner was not an authorized "target" of the Bar. Todd requested that the circumstances be reviewed, and Mr. Boggs said he would but never responded.

3.) On **December 4, 2001**, three hundred and twenty-two (322) days later, the Petitioner again wrote to Mr. Boggs of these circumstances in detail and with a copy to Todd Aronovitz. **Exhibit K**. Again Mr. Boggs said he would look into it, but did not respond.

4.) On January 29, 2002, fifty-four (54) days later, Mr. Boggs responded without responding. He did not dispute that the Serbin complaint was frivolous, but said, "we . . . will advise you further . . . before we may consider the issue of your continuing suspension." **Exhibit N**. No such advice was ever forthcoming by Mr. Boggs or anyone else at the Bar.

5.) On **June 5, 2003**, four hundred and ninety-two (492) days later, the Petitioner filed a written request that Mr. Aronovitz as the President of the Florida Bar and the Board of Governors as supervisors of the Florida Bar to review the circumstances herein. **Exhibit L**. On **June 11, 2003** Todd forwarded the Petitioner's written request to Tony Boggs for a response. Mr. Boggs **never** responded.

6.) On **April 15, 2004**, three hundred and fourteen (314) days later, the Petitioner forwarded his ten (10) page complaint about the circumstances herein to the Special Commission on Lawyer Regulation, which had just formed to investigate chronic complaints about the Legal Division of the Florida Bar. **Exhibit M**.

7.) On April 28, 2004, thirteen (13) days later, after a Commission member, forwarded her copy of the complaint to him, Mr. Boggs again responded without responding. Mr. Boggs said he had not responded, but, "others have communicated with you." **Exhibit N**. **This was incorrect**. Mr. Boggs was probably referring to Arlene Sankel, who was supposed to respond herein, but did nothing.

Boggs also contended that even if the Florida Bar agreed with the Petitioner's analysis, the Florida Bar could do nothing and the Petitioner, "must file a petition for reinstatement . . ." **Id**. **This was incorrect**. This Court's November 24, 1999 Florida Bar interlocutory order **only** allows the Florida Bar to file a paper in order to vacate the Court's interlocutory order of temporary suspension. **Exhibit A**.

Finally, two thousand five hundred and fifty four (2,554) days and after almost nine (9) years after Jon Serbin's complaint was revealed to be **frivolous**, Boggs, the Director of the Legal Division of the Florida Bar, said that he still doesn't know what the Florida Bar will do in response to the rape of the Petitioner's license herein. **Exhibit N**. However, Arlene Sankel, has filed an appearance herein, who Mr. Berman reported, "just hates you."

FAILURE TO ADHERE TO FLORIDA BAR GUIDELINES

It has now been almost twelve (12) years and four thousand one hundred and seven (4,107) days since Jon Serbin's frivolous complaint. The failure to timely resolve this circumstance is **unconscionable** and far outside of the reported Florida Bar guidelines for handling any complaint. The Florida Bar has long-standing staff guidelines for processing claims

through the various stages of the disciplinary process. **Special Commission on Lawyer Regulation**, "Report and Recommendations" (April 18, 2006) at Recommendation 5. The average time for processing claims from complaint to discipline is two hundred and forty eight (248) days. **Id.** In the present cause, Evans took from **September 10, 1996** to an **ex parte** hearing on **January 20, 1998**----five hundred and five (505) days just to **file** this matter in this Court. Discipline was not imposed until one thousand eleven hundred and forty six (1,146) days after the complaint. The most obvious reasons for such unconscionable delay were Linda Serbin refused to sign a sworn complaint; Jon's complaint was **frivolous**, and Evans had to shop around until she got a Grievance Committee to pursue the Petitioner.

None of the long-standing Florida Bar guidelines and none of the Average Guidelines were followed in the present cause. The failure to follow the guidelines is a red flag to this Court that this cause should not have proceeded. The Petitioner's rights and his clients' rights were trampled by the Florida Bar in favor of the unauthorized "targeting" of the Petitioner.

III.
STATEMENT OF FACTS AND CIRCUMSTANCES

The following verified facts and circumstances are of record and well-known to the Florida Bar:

A. THE SERBIN LITIGATION

In **November of 1992**, as reflected in our contractual agreement, Linda Serbin, with whom I had been having an affair, came to me in tears complaining to me, **a.)** that her estranged husband, who was an alcoholic, had been raping and beating her daughter since she was nine (9) years old with

both families' knowledge; b.) that she wanted to divorce Jon Serbin and to save her daughter, who had tried suicide several times; c.) that she paid the mortgage upon her home at 6475 Pine Tree Drive Circle with her own money, and by agreement with Jon Serbin, any money from the house was hers, but it was damaged in Hurricane Andrew and without legal representation, she had signed a stipulation with the bank to obtain a final judgment of foreclosure on her waterfront house of 21 years valued at $750,000 to $1.2 million, for the price of the $300,000 mortgage; d.) that she and her husband had both lied under oath to the creditors' lawyers and to the federal Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center was being mishandled by local counsel, who was pressuring her to accept a settlement. **Exhibit H** (letter and closing statement). I wrote to Linda that I would undertake to defend against these crises, but that we had to suspend our intimate relationship, which would become a weapon for her estranged husband in any divorce. See, **Exhibit H**. (My written agreement would have exonerated me from the Jon Serbin compliant in 1996, but would have violated my clients' confidences because Linda repeatedly refused to waive her privilege).

Thus in my letter dated **November 23, 1992**, I recited the foregoing and agreed to represent Linda Serbin in the foreclosure against her house and related matters for the flat sum of $25,000. **Exhibit H**. I repeated my plea to prosecute Jon Serbin for raping his child, which Linda refused to do:

"This will confirm that I have urged you to allow me to
present [the rape of Jon Serbin's daughter] to the State Attorney,
which you so far declined to do.

* * *

"Finally, I would again urge you to allow me to proceed against
Jon as to the rapes and beatings of Bess. It is the one matter, which
will enable you to recover your life again and perhaps to save your
daughter. Please. " **Exhibit I**, pp. 3 and 6.

Thereupon, **a.)** I took her daughter's case to competent counsel, who successfully prosecuted the case; **b.)** I was able for seven (7) months to block vigorous, successive attempts to sell her house upon the Courthouse steps and on **June 15, 1993**, Linda and I obtained an "as is" buyer for **$465,500**; **c.)** in **May of 1993** I also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer, who was apparently trying to force the sale on the Courthouse steps; and **d.)** on **June 5, 1998** at a Court hearing with Linda I obtained a judgment for the realtor's escrow deposit of **$27,000** upon the sale of her home. Thus, instead of the fire sale of Linda's house on the courthouse steps, which was damaged in Hurricane Andrew, Linda Serbin had recovered a total of **$517,500** ($465,500 + $25,000 + $27,000), on the back of the undersigned. **Exhibit I** (Letter to Wenzel).

On **August 4, 1993**, I gave Linda Serbin a closing statement on the Serbin foreclosure litigation, in which I recited that the $25,000 escrow

funds seized from the unrelated defaulting buyer was accepted as my fee. **Exhibit H**. However, I also recited that on June 15, 1993 to assist her in moving I had given $5,000 of my fee back to Linda Serbin. However, my November 23rd fee agreement was nevertheless satisfied. **Exhibit H**.

B. JON SERBIN'S COMPLAINT

As noted above, on **September 10, 1996**, more than three (3) years after the 1993 fire sale of her house and closing statement to Linda Serbin, I received the complaint of Jon Serbin. Jon Serbin made a confused, garbled complaint that I had kept about $18,000 in my trust account, since various events, including the sale of Linda's house in June 1993, without authorization. As noted, it was **undisputed** that the house was Linda's house and Jon Serbin agreed that all funds from any sale of the house were Linda Serbin's moneys. **Exhibit I**. Jon Serbin could not explain to the Grievance Committee on **January 20, 1998**, why he was not my client and why I was not entitled to any attorney's fees. Jon Serbin's theory, which he finally testified to before the Grievance Committee on **February 29, 2000**, was that I represented Linda Serbin since 1993 for free because she was, "a lady in distress." He also testified it was also okay that I had dated his wife.

In her initial cover letter in 1996, Counsel Elena Evans asked me to respond to Jon Serbin's complaint, "**to see if this matter should even be referred to a grievance committee**." **Composite Exhibit A**. The documents Evans sought on October 25, 1996, November 11, 1996 and in the Notice for

the January 20, 1998 hearing upon which this Court's referral
to a Referee and suspension is based, were the Serbin documents. **See, Id.**
As reflected in my letters to Evans and Motions for a Protective Order, I repeatedly responded that Linda Serbin was my only client, and I would be
happy to respond if she waived her attorney client privilege, but Linda repeatedly told me up to June 10, 1998, 1.) that she did not, waive her rights and 2.) she did not wish to make any complaint against me.
After the 11th Circuit Grievance Committee in Miami got my
response, but did not proceed, Ms. Evans transferred the case to the 17th Circuit. As noted above, in **April 1997**, the 17th Circuit Grievance
Committee issued a **punitive** subpoena for all client records, but after receiving my response, **declined** to proceed and **closed** its file.

C. JANUARY 20, 1998 EX PARTE HEARING

In **September 1997**, in the 11th Circuit Committee, Ms. Evans reissued the same **punitive** 17th Circuit Committee subpoena . A hearing was set by Evans for **January 20, 1998** at 5:30 o'clock p.m. upon "***the Complaint of Jon Serbin***" and apparently the Grievance Committee's September 22, 1997 subpoena. **Exhibit A**. I was **required** by the Notice to appear and defend against the taking of my license and to produce the Serbin documents. **Id.** No mention in the Notice was made as to the September 22, 1997 subpoena, for which on October 13, 1997, I had filed a Motion for a Protective Order. **Id.**

However, it was undisputed that I had a previously scheduled federal arbitration trial in

Seattle on **January 20, 1998** at 9:00 o'clock a.m. and I promptly cited to the standing Eleventh Circuit "***Federal State Administrative Conflict Order***" [codified as Florida Administrative Rule 2.052], and made two (2) detailed written requests asking for a delay of three (3) weeks to appear and defend against the taking of my license. In the hearing transcript of January 20, 1998 [pp. 43-63], it was **undisputed** that I was in a federal arbitration trial in Seattle, Washington. As noted, after being misled by its Chairman who decided that the requests were not specific enough, the Committee proceeded with only three (3) of eleven (11) members present. Despite Linda's repeated assurances to me both **before** and **after** the hearing that she was not there and had not made a complaint, Linda Serbin appeared, **un-sworn** on the phone. Jon Serbin's testimony was completely garbled. Therefore after meeting secretly, the Grievance Committee thereupon issued a recommendation, that I be **temporarily** suspended until I complied with the September 22, 1997 subpoena.

D. THE REFEREE'S MANIFEST CONFLICT OF INTEREST

As noted, on **March 25, 1998** a referee was appointed after this cause was filed in this Court. The Referee, Paul Siegel, was aware of the grounds for his disqualification, which had been filed in this case and others, because, 1.) Siegel was a personal and political opponent of the undersigned; 2.) he had expressed preformed, extrajudicial, derogatory personal opinions about the undersigned; 3.) he was the object of my petition against the Governor in **Fox v. Chiles**, Florida Supreme Court Case No. 78,906 and complaint to block his nomination for judge; and

4.) he had repeated, secret, **ex parte** contact with counsel for the Florida Bar, which included being provided cases and public relations materials on how to decide the cause(s) against the undersigned. **Exhibit G** (Verified Motion to Disqualify); **Composite Exhibit Q** (Gelber exhibits). Under the "no defense"rule, neither the Florida Bar nor Siegel cared about my due process rights; my assertion of my clients' attorney-client privilege; nor anything which had happened before the Grievance Committee. Although the Referee promptly agreed to conduct an **in camera** proceeding, Arlene Sankel objected and argued that the Petitioner could disregard Linda's attorney client confidences. Status hearing, June 10, 1998, pp. 10-12. Therefore, after only a status hearing and a settlement hearing, Referee Siegel rubber stamped the Grievance Committee's order of suspension.

E. SECRET HARASSMENT of REPRESENTED CLIENT

There was **inordinate** delay in this cause in excess of Florida Bar guidelines, for sixteen (16) months between **September 10, 1996** and the **ex parte January 20, 1998** hearing, because under Florida Bar guidelines, Evans had to have Linda Serbin's sworn complaint in order to sustain a complaint in this Court. For the hearing on January 20, 1998, Jon Serbin had actually **forged** Linda's name on a complaint, trying to get the Grievance Committee to proceed. **Exhibit I**, p. 12; Referee Hearing of June 10, 1998 at pp 14-15. Therefore for almost two years, without explaining Linda's rights and the waiver of her rights, Evans and her supervisor, Arlene Sankel, authorized the harassment of Linda by investigators to make a

complaint against the undersigned, which Linda **refused** to do. Finally, on **June 6, 1998**, the day **after** I had obtained the sum of $27,000 for her, Linda allegedly signed a statement adopting Jon Serbin's complaint. **Id**. at p. 10.

Therefore, for the first time on **June 10, 1998**, at a status hearing with new Florida Bar counsel, Gregg Wenzel, the undersigned received a statement purportedly by Linda Serbin, adopting Jon Serbin's complaint. Therefore on July 20, 1998 Wenzel and I promptly reached an agreement to produce the Serbin documents. However at the settlement hearing on August 14, 1998, Arlene Sankel disagreed with the terms Wenzel had agreed to and submitted a proposed order to the Referee, which conflicted with the July 20, 1998 agreement with Wenzel. Referee Siegel signed Sankel's proposed order, thereafter recommending the temporary suspension of the Petitioner's license for failing to comply with the September 22, 1997 11th Circuit Grievance Committee subpoena. The Petitioner's vigorous Motion for Rehearing was denied. Based upon the Referee's order, On November 24, 1999 this Court entered its order of suspension

F. REVIEW BY THE U.S. SUPREME COURT

The Petitioner sought review of this Court's November 24, 1999 order in the United States Supreme Court. **Fox v. Florida**, U.S. Case No. 99-1887. On **October 2, 2000**, the United States Supreme Court denied certiorari without comment. **Id**. In the extensive appellate experience of the Petitioner in successfully obtaining review on the merits in the U.S. Supreme Court, the Court denied review, because for purposes of the United States Supreme Court's jurisdiction, this Court's temporary,

day to day, suspension, is only an interlocutory order for which the Supreme Court even more rarely grants review. **E.g., United States v. Ryan**, 402 U.S. 530 (1971)(order enforcing subpoena is not reviewable; **Republic Natural Gas v. Oklahoma**, 334 U.S. 62 (1948)(U.S. Supreme Court has no jurisdiction to review non-final state court judgments); **Market Street Railway v. Railroad Commission of California**, 324 U.S. 548 (1944)(state court order must be final and not merely interlocutory or intermediate). **Ipso jure**, the U.S. Supreme Court's denial of certiorari has **no** value as precedent. Furthermore, as reflected in the **February 29, 2000** dismissal by the same Grievance Committee which had recommended the temporary suspension, it was apparent to the U.S. Supreme Court that the dispute was resolved.

G. SAME COMMITTEE FINDS NO PROBABLE CAUSE

As noted, on February 22, 2000 this Court denied rehearing and a week later on **February 29, 2000**, the Florida Bar through new counsel, Gregg Wenzel, rescheduled the 1998 hearing **before the same 11th Circuit Grievance Committee** upon the complaint of Jon Serbin as adopted by the **pro forma** complaint of Linda Serbin. As noted, at the hearing Linda appeared **for the first time** and **for the first time** the undersigned was allowed to appear and to defend his license. **For the first time**, the undersigned was allowed to produce the November 23, 1992 agreement with Linda Serbin and closing statement. **Exhibit H**. The testimony and evidence received by the Committee demonstrated that Jon Serbin's complaint was **frivolous**. Therefore, on **March 14, 2000**, the Grievance Committee issued its

unanimous finding of no probable cause and its Report of No Probable Cause and letter to the Serbins. **Exhibit B**.

IV.
ARGUMENT

A. THE FLORIDA BAR'S NO DEFENSE RULE AND THE LACK OF SEPARATION FROM THIS COURT IS UNCONSTITUTIONAL

Chief Justice R. Fred Lewis has urged the doctrine of "fairness" and humanity in order to decide cases in the context of all circumstances. **See**, "**R. Fred Lewis----A coal town's son who is guided by the rule of fairness**," "The Florida Bar Journal" October 2006, pp. 10-21. Justice Lewis' doctrine of "fairness" is the essential value in order to vacate the manifestly unfair, interlocutory suspension herein. The importance of this cause to the Court, is that the **unfair** trampling of an attorney's rights inevitably resulted in the **unfair** trampling of his clients' rights. Moreover, the effective punishment herein is grossly disproportionate. Unfairly and capriciously depriving a person of the means to a livelihood, as in the case at bar, is one of the most grievous harms which the government can impose outside of the death penalty. **See**, **e.g.**, **Cleveland v. Loudermill**, 470 U.S. 532, at 543 (1986); **Fusari v. Steinberg**, 419 U.S. 532, at 389 (1975); **Bell v. Burson**, 402 U.S. 535, at 539 (1971); **Goldberg v. Kelly**, 397 U.S. 254 (1970); **Snaidach v. Family Finance**, 395 U.S. 337, at 340 (1969). Those who have experienced it say the loss of the means to a livelihood is even worse than death.

Under the November 24, 1999 Florida Bar form order, generated by the Florida Bar's headlong,

unlawful and unethical practices against the Petitioner and his clients, the Petitioner has needlessly and unfairly been forced to sacrifice his career, his family and his health in order to defend his clients' attorney-client privilege. Under the "no defense" rule this Court was not required to conduct any meaningfully review. Indeed, under the "arm of the Court" fiction and the "no defense" rule, the injustice herein has continued un-reviewed and ignored for almost nine (9) years. The Petitioner at age fifty-two, should have been in the prime of his legal career and applauded for protecting his clients' confidences; upholding the finest tradition of the profession as required by this Court. **See, e.g., Seaboard Air Line v. Parker**, 65 Fla. 543, 62 So. 589 (1913). Instead, there was no meaningful review, and this matter has languished, ignored by the Florida Bar for almost nine (9) years, without the slightest concern or response by the Florida Bar, where the Petitioner, was not charged with murder, abusing drugs, being a drunk nor as a corrupt judge. **To the contrary**, on February 29, 2000 Jon Serbin's complaint was revealed as **frivolous**. Meanwhile the Florida Bar reinstates drug abusers, alcoholics, liars and thieves in order to get them back to work in a fraction of the time herein. The present circumstance should shock the conscience of this Court as an incredible abuse of the power of this Court entrusted to counsel for the Florida Bar.

1. "No Defense" Rule is Unknown and Unconstitutional.

Rule 5-1.2(f)(1) appeared in the September Florida Bar Journal for the first in 1992 and provides **inter alia**, that in defending a subpoena:

"Members of the bar . . . may not assert any privilege
personal to the lawyer."

The implementation of Rule 5-1.2(f), the "no defense" rule herein by Evans and her supervisor, Sankel, is that lawyers have "no defense,"----including that of raising the attorney-client privilege of their clients against a Florida Bar subpoena. **Sud judice**, under Rule 5-1.2(f)(1) this Court in issuing its initial interlocutory order on November 24, 1999 did not have to consider the host of reversible errors and prejudicial misconduct against the Petitioner and his client herein.

However, the Petitioner was admitted to the Florida Bar on May 22, 1975 and between 1975 and 1992, there was no Rule 5-1.2(f). In Florida it is well settled that a professional license may not be taken without due process under the state and federal constitutions. **See, e.g., Delk v. Department of Professional Regulation**, 595 So.2d 966, at 967 (Fla.5th DCA 1992). Similarly, vested rights may not to be taken without due process. **Cleveland v. Loudermill**, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). The Petitioner is a citizen and has never made a knowing waiver of all rights. Thus, in **Spevak v. Klein**, 385 U.S. 625, 87 S.Ct. 625,___L.Ed.2d ___ (1967) an attorney was disciplined by the New York Court because he refused to produce financial records and to testify at a judicial proceeding on the basis that the production of records and his testimony would tend to incriminate him under the Fifth Amendment. In reversing the state court, the **Spevak** court explained

that attorneys are citizens too and as such are entitled to claim constitutional rights:

> "The threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege. That threat is indeed as powerful an instrument of compulsion as the 'use of legal process to force from the lips of the accused individual the evidence necessary to convict him.' * * * Lawyers are not excepted from the words, 'No person * * * shall be compelled in any criminal case to be a witness against himself'; and we can imply no exception. * * * Lawyers also enjoy first-class citizenship."
> [Citations omitted]. 87 S.Ct. at 628-629.

As in **Spevak v. Klein**, the undersigned enjoys first class citizenship did not check his rights at the door when he became a lawyer in 1975. As the keepers of the faith, lawyers should be entitled to rights as citizens. Summarily depriving lawyers as a class of all rights is unconstitutional as a denial of due process and equal protection. **Spevak v. Klein**. The fiction that accused lawyers have waived all rights just because they are lawyers, without a knowing waiver of those rights, is an anathema to any sense to Justice Lewis' doctrine of "fairness." The fiction that all lawyers have no rights just because they are lawyers, more importantly results in the denial of clients' rights. In the present cause, Rule 5-1.2(f), the Florida Bar's "no defense" rule, resulted in this Court improvidently signing an interlocutory order, which allowed Sankel and Evans to summarily deny

the Petitioner's rights and his clients' rights. Prejudicial errors were immune from review and the Florida Bar's form order even deprived the Petitioner of his right to a stay upon filing a motion for rehearing under Rules 9.300(b) and 9.340(b), which is afforded to ax murderers, thieves and serial rapists. The unfairness of the proceeding herein is manifest and this Court has authority and jurisdiction to control its interlocutory order.

2. Lack of Separation: Unconstitutional as Denial of Due Process.

Under Rule 2-3.1 Florida Bar lawyers are cloaked with quasi-judicial authority as "arms of the Florida Supreme Court." **See, e.g., Mueller v. The Florida Bar**, 390 So.2d 449, 451 (Fla. 4th DCA 1980). Arlene Sankel, who was Evans's supervisor in the case at bar, reminds anyone who will listen that her opinions are worthy of greater attention because she is, "an arm of the Supreme Court." The abuse of that power and the lack of "fairness" in the lawyer disciplinary system herein affected not just the Petitioner, but also the rights of his clients. The improper exercise of this Court's power herein, which was not subject to meaningful review is the result of the unconstitutional lack of separation between the Court and the Bar. In **Goldstein v. Commission on Practice of the Supreme Court**, 2000 Mt. 8, 995 P.2d 923 (Mont. 2000) the Court was confronted by the issue facing this Court herein which developed because of the lack of separation between the Court and the Florida Bar. In reviewing the necessity of separating the functions of prosecutor, fact finder and judge in disciplinary proceedings, the **Goldstein** court concluded that:

> "[T]he Pennsylvania Supreme Court, relying on the U.S. Supreme Court's decision in *In Re Murchison* (1955), 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942, expressly ruled that the combination of the functions of prosecutor, judge and jury in an attorney disciplinary proceeding violated due process."

995 P.2d at 941. In the case at bar, Evans and her supervisor are **de facto** prosecutors, judges and juries, because they are immune from review as, "arms of the court." **See**, **Mueller v. The Florida Bar**, **supra**, **The Florida Bar v. Lewis**, 358 So.2d 897, 899 (Fla. 1st DCA 1978), R.Regulating Fla. Bar 2-3.1. The palpable misconduct herein, which this Court would not tolerate in any other case, existed with impunity, because there was no meaningful review of the implementation of the power of this Court, because there is no separation between the Court and the Florida Bar, and the "no defense" rule shielded Evans and Sankel from review. The Florida Bar practices herein were an aberration apart from the moral standard of Justice Lewis's "fairness" doctrine. Abuse of power which is not subject to review and the lack of separation between the Court and the Florida Bar is a denial of due process. **Goldstein**; **Schlesinger**, 172 A.2d 835 (1961).

B. PROTECTING PUBLIC WAS IRRELEVANT WHERE THE THE PURPOSE OF THE PROCEEDING WAS TO TARGET FOX

It is of course, well settled that the purpose of disciplinary proceedings is to protect the public. **See**, Brewer, W., "Due Process in Lawyer Grievance

Cases," 42 South Carolina L. Rev. 925, 941 (1991). In the present cause protecting the public was not the motivating factor. There is an **unfortunate** back story here. The unchecked abuse caused by the lack of separation from the Court and the "no defense" rule has a darker side. Proceeding upon a **frivolous** complaint; harassment of a represented client; and the Miami office of the Florida Bar leaving this cause to rot for nine (9) years, illustrate that this cause was **not** solely the accident of overzealous counsel, the "no defense" rule nor the disregard for the attorney-client privilege.

Query: why this matter, after the February 29, 2000 Grievance Committee hearing was left to rot for nine (9) years, when there were no more than technical violations of records? Why didn't Evans or Sankel review the documents **in camera** in 1996 or simply reset the 1998 **ex parte** hearing, as Wenzel did on **February 29, 2000** when the complaint against the Petitioner was revealed as **frivolous**? Why did this temporary, day to day, suspension continue for nine (9) years, after the President Elect of the Florida Bar and then President of the Bar asked that this matter be reviewed, and was assured the Petitioner was not an authorized "target"?

1. Unauthorized "Target" of the Miami office of the Florida Bar.

It was therefore no surprise when his friend, Mark Linowitz, (305) 858-9813, called the undersigned about this Court's temporary suspension order on **November 24, 1999**, to relate that the Miami office of the Florida Bar had also **begged** him to file a complaint against the Petitioner, which he declined to do. The Miami office of the Florida Bar told Linowitz that they had listed the

Petitioner on a chalk board of **targeted** attorneys, after my testimony against the State in **Stewart** described below.

2. Personal Vendetta in the Miami office of the Florida Bar.

It was a great surprise however, when the supervisor of the Miami office of the Florida Bar, Arlene Sankel, who testified she was a buddy of Evans, responded with such personal venom. On **May 13, 2002** the undersigned had retained prominent counsel, Andrew Berman, of Young, Berman, Karpf & Gonzalez, P.A. (305) 945-1851, to resolve this matter with Arlene Sankel. However, Mr. Berman subsequently related that the conversation with Sankel was so vitriolic that it was, "**not worth relating**." Mr. Berman explained, "**she just hates you**!" As reflected on the face of this case, there was no consideration of fairness herein prior to Mr. Wenzel summarily resetting the Serbin hearing for February 29, 2000 to allow the Petitioner to defend this cause. For Ms. Sankel this matter was **was** a personal vendetta. If she had been instructed by Mr. Boggs, as suggested by his letters of January 29, 2002 and April 28, 2004, Sankel did nothing.

3. Social and Political Subculture of Attorneys Employed by State

Clues that this cause was **never** about protecting the public are also found inside the social and political subculture of attorneys employed by the State in Miami. The Petitioner has been a lightning rod for critics, because of his unerring stands for issues that matter.

Historically, the offices of the Florida Bar and the State Attorney's offices in Miami are populated with lawyers from the Miami office of the Attorney

General. For almost ten (10) years from 1977 to 1987, the Petitioner was the Senior Assistant Attorney General of the Miami office. As the Senior Assistant Attorney General, the Petitioner participated in hiring decisions and recommended **against** hiring at least one of the senior attorneys in the Miami office of the Florida Bar and against hiring members of the Attorney General's Offices, who are now employed there.

The undersigned was also married to the less than popular Chief narcotics prosecutor for Janet Reno, the State Attorney, and supported the efforts of the State Attorneys in court and the field in narcotics interdiction.

Attorneys in both the State Attorney's and Attorney General's offices still argue cases, some noted herein, which were developed by the undersigned.

On behalf of all lawyers employed by the State, the Petitioner sued the State to stop the statutory conversion of all attorneys employed by the State from career service to employment at will in **Calvin Fox v. Jim Smith**, U.S. District Case 85-3215-CIV-ZLOCH. The Petitioner also litigated complaints against Snurkowski, the Senior attorney and supervisor of the Attorney General's Tallahassee office, because of her anti-Semitic, racist remarks and inappropriate office celebrations as defendants were executed. Snurkowski and her supporters were not pleased.

4. Testimony against the State in Stewart death penalty case.

More obvious to this Court's consideration of this cause, is that lawyers employed by the state are like law enforcement officers----they close ranks against those who appear to stand against them.

Thus, in the underlying case, **Stewart v. State**, 420 So.2d 862 (Fla. 1982) the undersigned had successfully prosecuted multiple federal and state appeals to uphold the validity of Stewart's death sentence. **E.g.**, **Stewart v. Florida**, 460 U.S. 1103, 103 S.Ct. 1802, 76 L.E.d.2d 366 (1983); **Stewart v. Wainwright**, 802 F.2d 395 (11th Cir. 1986); **Stewart v. State**, 481 So.2d 1210 (Fla. 1986). However, **Stewart** was an usual case in that I had not reviewed the sufficiency of the evidence, because counsel failed to raise the issue. However, at the first collateral proceeding, the Petitioner reviewed the sufficiency of the evidence with his friend, Judge Stanley Goldstein, who had been trial counsel. For the first time I was aware that there was a plausible claim of innocence and reversible errors, and I reported this to the Chief of the Criminal Division, George Georgieff. **Exhibit P** ["**Review of Death Penalty Literature: Why it Should be Abolished: the execution of Roy Allen Stewart**," Fox, C. EDD 9200 (Trends and Issues, Spring 2008)].

Years later and just days before Stewart was scheduled for execution, the undersigned heard the report of Stewart's impending execution on the radio and promptly called Capitol Defense Counsel and offered to testify against the State. **See**, **Stewart v. State**, 632 So.2d 59 (Fla. 1993); **Exhibit O** ["**Convictions and Conscience Remain on Trial**" Sun Sentinel July 16, 1990 (Fox testifies that Stewart should not be executed because of the injustice of executing him for a crime he may not have committed---after representing the state against Stewart)]; **Exhibit P**, pp. 8-16. The testimony of the undersigned was not warmly received by the lawyers employed by the State. It was however, consistent

with his ethical duty as a prosecutor. It was therefore correctly reported that he was threatened:

"Fox says that [the] overall duty forced a decision that has not been easy or good for his relationship with former associates who represent the state. He says he was 'threatened by one person in the state attorney's office' to not volunteer his testimony. He says he has received a lot of criticism and lost friends as a result." Sun-Sentinel p. 7e, July 26, 1990.

The Petitioner had been confronted outside the **Stewart** hearing, just before he testified by a former Assistant Attorney General, Penny Hershoff, who was then an Assistant State Attorney in the Legal Division of the State Attorney's office, which was made up entirely of former Assistant Attorney Generals from the Miami office. Ms. Hershoff threatened the Petitioner to not testify, saying repeatedly, "**Don't do this; Don't do this**" and, "**You'll be sorry**!" The Petitioner complained of this unlawful threat to Judge Salmon, who also had to reign in the out-of-control cross-examination by the prosecutor in front of a gallery of my former colleagues from the Attorney General's Office.

The facts were clear: Stewart with a borderline IQ of 70 had "confessed" after two (2) days of interrogation at his rural South Carolina home and made his mark upon a one (1) page statement typed by the detectives. **Exhibit P**. Among many defects, the "confession" did not fit the crime. Judge

Michael Salmon rejected all other grounds, but initially granted a stay of execution based **solely** upon my testimony. **Id.** pp. 16-17; **Stewart v. State**, 632 So.2d at 59-62; **cf.**, **Exhibit O** (Sun-Sentinel p.7e (**"Stewart was granted a stay of execution based partially on Fox's testimony, which [Judge Salmon] said, 'raised serious questions'"**). Roy Stewart's defense was **admittedly** botched at the trial by Judge Goldstein; his direct appeal counsel did not raise the sufficiency of the evidence; and his collateral attorneys failed to timely raise the competency of trial and appellate counsel. Indeed, the collateral review judge, Judge Salmon, said he would have granted relief on the initial collateral claims if he had known of the information then, which was later barred. Therefore, in **Stewart** the undersigned had the **uncomfortable**, ethical duty to seek justice, as in the present case, where he had the uncomfortable duty to defend Serbin's confidences----each of which required him to uphold an ethical promise despite profound personal and professional threats.

5. Ethical Conflict of Referee Paul Siegel----Gelber Election/conviction.

In a related matter, the undersigned was recruited to run against Roy T. Gelber, Florida Bar No. 229350, for the vacant 11th Circuit seat in Group 62, because Gelber was regarded as corrupt and corruptible. **See**, **Composite Exhibit Q**. However, Roy was a friendly, popular Assistant State Attorney, whom many Assistant State Attorneys had appeared before as a County Court judge and was therefore heavily supported by lawyers employed by the State and former colleagues of the Petitioner. During the campaign, Gelber's former law office manager came forward and told the undersigned a tale of how there

had been a meeting and the plan was afoot to elect Gelber in order for him to take bribes for favors and to pay kickbacks from court appointments. **Id.** After reducing this tale to affidavit form, the Petitioner provided the affidavit to the Miami Herald. **See**, **Exhibit Q** (Mumper Affavit as filed in Fla.S.Ct. Case No. 78, 906). As fate would have it, The Miami Herald **declined** to publish the affiidavit, because the Herald believed the affidavit would "confuse the public," and denigrate the Herald's efforts to award the Miami Herald "Spirit of Excellence Award" to, and to name a building for, Seymour Gelber, a retiring Circuit Court Judge, who happened to be Roy's uncle. Therefore, with ads pretending he **was** Seymour and that he was just seeking reelection as a circuit court judge, Roy conned ignorant voters into being elected. **See**, **id.** However, as in a Shakespeare drama, the affidavit the undersigned had generated found its way to the U.S. attorney's office, which resulted in wiretaps of Roy and other judges and Gelber's guilty plea and resignation in the "Court Broom" cases----the largest judicial corruption probe in the history of the United States----for doing exactly what my affidavit said he would do. **See**, **id.** However, in stark contrast to their relentless pursuit of the Petitioner by Evans and Sankel herein upon Serbin's **frivolous** complaint, the Florida Bar graciously agreed to disbar Gelber, but to allow him to seek reinstatement!

Relevant to this petition, after Gelber's indictment, attorneys employed by the State still gossiped that the affidavit of Gelber's former office manager, which brought him down, was a political dirty trick by the undersigned. After Gelber pleaded guilty and was removed, the Petitioner filed a grand

jury complaint to set aside the election and petitioned this Court to set aside the election of Gelber as the undeniable result of a criminal conspiracy. **Exhibit Q** (**Fox v. Chiles**, Fla. S. Ct. Case 78,906). Justice Adkins **dissented** from the denial of relief by this Court. The State Attorney ignored my complaint.

Therefore, after competing with Referee Siegel before the Nominating Committee, the undersigned's petition to the Governor sought to block the nomination of Paul Siegel as a Circuit judge to replace Gelber. **Id.** Siegel and his supporters were not delighted with the Petitioner's attempt to block Siegel's appointment. Nevertheless, Siegel was appointed and was the Referee herein, and subject to Motions to Disqualify in this case and others.

6. Conclusion: Lawful Purpose of Protecting Public was Irrelevant.

Mr. Berman explained that even assuming the worst, with no more than technical violations, any suspension herein should have been over years ago. **E.g.**,; "Bar disciplines lawyer for taking combat pay," **The Palm Beach Post**, September 1, 2008, p. 4b (connected lawyer Stone suspended for 90 days for stealing combat pay, while not in combat); **The Florida Bar v. Tauler**, 775 So.2d 944 (Fla. 2000)(Court allows a three year suspension for chronic thief and liar----Fox not called as witness); **The Florida Bar v. Thomas**. 698 So.2d 530 (Fla. 1997)(three (3) month suspension for stealing); **The Florida Bar v. Corces**, 639 So.2d 604 (Fla. 1994)(two year suspension); **compare**, **Florida Bar v. Roy T. Gelber**. Florida Bar No. 229350 (largest judicial corruption case----"may apply for reinstatement"). Clues that there was no legitimate purpose served by

the suspension of the Petitioner----that the headlong pursuit of the Petitioner was the consequence of his testimony in **Stewart**; "targeting" the Petitioner; and a personal vendetta, can also be drawn from the collective circumstances of, a.) the inordinate delay and shopping around by Evans for a better result; b.) the unlawful disregard by Evans and her supervisor, Sankel, for the attorney-client privilege; c.) the refusal by Evans and her supervisor, Sankel, to even consider **in camera** review (which the Referee immediately agreed to), which would have shown the Jon Serbin complaint in 1996 to be frivolous; d.) the two year harassment of his client authorized by Evans and her supervisor, Sankel, to make a claim where Linda constantly refused to; e.) Evans inviting the Petitioner to testify and produce documents, but then forcing an **ex parte** hearing contrary to settled conflict rules; and f.) Sankel leaving this suspension to rot for almost nine (9) years after the complaint upon which this cause is based, was revealed as **frivolous** on **February 29, 2000**. In the totality of such circumstances, there is no basis to claim that this was to protect the public, or that the misconduct and abuses of its "arm" are consistent with the fairness and conscience of this Court.

V.
CONCLUSION

I apologize to the Court for my bitterness, but my family and I have suffered terribly and the Florida Bar's form interlocutory order has left my license in a state of limbo for almost nine (9) years with no adequate means of review nor any means to seek meaningful review by this Court. I have been unemployed and unable to secure even the most

menial job, directly because of this circumstance since February of 2000 except for one, temporary, part time job in 2007. My health has collapsed and I have no money to pay for medical care or medicines. I have been divorced and my family shattered because of my inability to provide for my family in this circumstance; and I have had no health insurance since February 7, 2000 and mounting medical bills and a severe decline in health. My four (4) sons, who are innocent bystanders, have suffered socially from a coward's whisper campaign by riff raff who have neither the conscience nor backbone to come out from under their rocks to say what they think they know.

The temporary suspension of my license was **manifestly unfair and unjust** and served no legitimate purpose as demonstrated by the hearing and finding of no probable cause on **February 29, 2000**. But for Elena Evans and her supervisor, Sankel's, disregard for my rights and my clients' attorney-client privilege, this matter would have been concluded in 1996 and closed in the same manner and result as it did on **February 29, 2000**. But for secretly harassing my client for two years to make a compliant, the injustice of Jon Serbin's frivolous complaint would have been revealed twelve (12) years ago. It just suited Sankel's purposes to do otherwise.

Furthermore, the Notice of the **ex parte** 1998 hearing recited that the Petitoner was only required to produce the Serbin documents, but was required to raise defenses and the privileges of his clients. The duty owed to a client to protect confidences under the attorney-client privilege is the most important foundation of all we do. Henry Peter Brougham,

Counsel to the Queen, in 1750 provided the classic statement of the duty owed by the attorney to his client:

"An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of the consequences, though it should be his unhappy fate to involve his country in confusion."

Horton, S., "State of Exception: Bush's War on the Rule of Law," **Harper's**, July 2007, p. 78. The abuse by Florida Bar of the Petitoner's exercise of the duty owed by the Petitioner to his client, described by Counsel Broughman, continued because it has not been subject to meaningful oversight, supervision or review. If Florida Bar counsel, Evans and Sankel were, **an arm of the Florida Supreme Court**, an "arm of the Florida Supreme Court" secretly harassed my client to make a complaint for almost two years; an "arm of the Florida Supreme Court" **recklessly** trampled the attorney-client privilege; an arm of the Court engaged in supplying cases and materials **ex**

parte; and an "arm of the Florida Supreme Court" trampled due process and fairness.

Finally, the Court should note that the Petitioner, and not the Florida Bar, has not brought the absurdity of this temporary suspension to the Court's attention. Attorneys are the keepers of the faith and it is unfair for the Court to tolerate the denial of the rights of the Petitioner merely because he is an attorney. There was no exigency and no motion to expedite or do away with the Petitioner's rights under the appellate rules as in a death penalty case. The Petitioner was entitled to file for rehearing and for a stay of this Court's interlocutory order of November 24, 1999 in order to seek meaningful consideration of this cause. Most importantly, the abuses and errors committed herein in the name of this Court unfairly affected both the Petitioner's rights and the rights of the Petitioner's client, who resisted making any complaint while being secretly harassed to make a complaint. In the interest of fairness, this Court must overturn the interlocutory order, which was improvidently issued herein because of the lack of separation, supervision and meaningful review or enter a final order allowing the Petitioner to seek review.

CALVIN DAVID FOX

STATE OF FLORIDA :
: ss:
PALM BEACH COUNTY:

CAME AND APPEARED, before me the undersigned authority, CALVIN DAVID FOX, who first being sworn deposes and says that he prepared the Petition herein and the facts and circumstances at pages 1 to 47 are true and correct to the best of his recollection, information and belief. On this ____ day of July, 2008, at Jupiter, Florida.

NOTARY PUBLIC
State of Florida

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays, 1.) that this Court will vacate this Court's interlocutory, temporary suspension of the law license of the Petitioner, nunc pro tunc to November 24, 1999; 2.) that this Court will strike the Florida Bar form order denying the Petitioner the benefit of Rules 9.300(b) and 9.340(b) Florida Rules of Appellate Procedure; and 3.) that this Court will find Rules 2-3.1 and 5-1.2(f) unconstitutional as applied herein.

CALVIN DAVID FOX
Florida Bar No. 192098
Post Office Box 7900
Jupiter, Florida 33468
(954) 383-5943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Revised Petition and the Revised Appendix were caused to be served on this ____ day of July 2008 upon the Florida Bar by

serving John Anthony Boggs, Director of the Legal Division, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Arlene Sankel, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131; and Kenneth L. Marvin, 651 E. Jefferson Street, Tallahassee, Florida 32309-6584.

CALVIN DAVID FOX

[EXCERPT]

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC08-1328

THE FLORIDA BAR, Petitioner,

vs.

CALVIN DAVID FOX, Respondent.

[Response of the Florida Bar by Arlene Sankel: the Respondent has not complied with the 1997 Grievance Supoena].

IN THE SUPREME COURT OF FLORIDA

CALVIN DAVID FOX,

CASE NO. SC08-1328
Formerly Case No. 92,484

Petitioner/Respondent,

VERIFIED MOTION TO STRIKE NOTICE OF APPEARANCE AND DISQUALIFY ARLENE SANKEL

THE FLORIDA BAR,

Respondent/Complaintant.

_____/

COMES NOW, the Petitioner, CALVIN DAVID FOX, by and through his own counsel, and submits this Verified Motion to Strike Notice of Appearance and to Disqualify Arlene Sankel and as grounds shows:

1.) That Arlene Sankel has filed an appearance as counsel for The
Florida Bar in this cause.

2.) That as reflected in the Verified Petition to Vacate at pp. 8-27; 33-46, Arlene Sankel is one of two bad actors in this cause and has the most responsibility in that she supervised the other bad actor.

3.) Ms. Sankel related to Andrew Berman as recited at page 35 of the Petition that she has an unusual personal hatred of the Petitioner and any conversation about the Petitioner was so bitter and hateful, it was not worth even relating.

4.) That furthermore, as recited at pp. 34-35 and as reflected in the totality of circumstances herein, Sankel as supervisor of the Miami office of the Florida bar allowed the Petitioner to be the subject of an **unauthorized** and illicit targeting by the Miami office she was supposed to be supervising.

5.) As reflected in the totality of circumstances in Case 92,484, the likelihood was that the frivolous complaint against the Petitioner was both pursued and then subsequently ignored by

Sankel for a total of almost twelve (12) years as the result of a personal vendetta and abnormal personal hatred of the Petitioner, which affects Sankel's judgment and fairness as a representative of this Court.

MEMORANDUM

Sankel has a palpable conflict of interest in acting in this cause in that she cannot act in the fair and measured fashion to evaluate this cause, which is required of Florida Bar Counsel, who are supposed to be acting on behalf of this Court as an "Arm of the Court." **See**, **e.g.**, **Mueller v. The Florida Bar**, 390 So.2d 449,451 (Fla.4th DCA 1980).

As for example, the "Creed of Professionalism" The Florida Bar Journal (Sept. 1999) p. 713, which Sankel was sworn to uphold, provides **inter alia**, specifically that:

"I will **strictly** adhere to the spirit as well as the letter of my profession's code of ethics, to the extent that the law permits and will at all times be guided by a fundamental sense of **honor, integrity, and fair play**.

I will not knowingly misstate, distort, or **improperly** exaggerate any fact or opinion and will not permit my silence or inaction to mislead anyone.

I will conduct myself to assure the **just, speedy** and inexpensive determination of every action and resolution of every controversy.

I will abstain from all rude, disruptive, disrespectful, and **abusive** behavior and will at all times act with dignity, decency and courtesy.

I will respect the time and **commitments** of others.

I will be diligent and punctual in **communicating** with others and in fulfilling commitments.

I will exercise **independent** judgment and will not be governed by a client's ill will or deceit." [Emphasis added].

Similarly, the "Oath of Admission to The Florida Bar," Florida Bar Journal (Sept. 1999), p. 713, provides in the relevant part that:

"I will not counsel or maintain any suit or proceedings which shall appear to me to be **unjust**, nor any defense except such as I believe to be **honestly** debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with **truth and honor**, and will never seek to mislead the judge or jury by any artifice or **false statement of fact** or law;

I will maintain the **confidence and preserve inviolate the secrets** of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

I will abstain from all **offensive personality** and advance **no fact** prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged." [Emphasis added].

Contrary to the letter and spirit of the "Creed of Professionalism" and the "Oath of Admission to the Florida Bar," and reflecting adversely upon Sankel's ability to appear as Bar Counsel in this cause, a.) she is so consumed by personal hatred of the Petitioner

she is unable to discuss this cause rationally and has abandoned all notion of fairness and independent judgment; b.) despite Mr. Boggs assurances to the President of the Florida Bar, Sankel allowed the unauthorized targeting of the Petitioner in her office, resulting in the suspension of the law license of the Petitioner upon a **frivolous** complaint; c.) she avoided all timely resolution of the **frivolous** complaint herein in favor of shopping around among three different Grievance Committees; d.) she pursued a **frivolous** complaint when it was shown the Petitioner's client refused to join the complaint and the complaintant had forged the client's signature on the complaint form; e.) she authorized the secret, two year harassment of a represented client, to force her to join a **frivolous** complaint; f.) under her watch, the Petitioner's Motions for Protective Orders were ignored and she authorized the trampling of Linda Serbin's and Bess Serbin's attorney-client confidences to sustain a **frivolous** complaint; g.) she blocked **in camera** review, which would have shown the complaint to be **frivolous** in 1996; h.) she authorized an **ex parte** hearing to suspend the Petitioner's license contrary to express conflict rules and professional courtesy to the contrary and ; i.) despite Mr. Boggs assurances, she left the Petitioner's temporary suspension to rot for almost nine (9) years after the complaint was revealed as **frivolous**.

Thereby Arlene Sankel has a palpable conflict of interest in appearing as Bar Counsel, who stands in the stead of this Court as "an arm of the Court." and cannot act fairly nor reasonably as an "arm of this Court" on behalf of The Florida Bar in this matter.

Furthermore, as an "arm of the Florida Supreme Court" Sankel is cloaked with the power and authority of this Court, and should be held to the high standards for the disqualification of a judicial officer. **See**, **e.g.**, **State ex rel. Davis v. Parks**, 141 Fla. 516, 194 So. 613 (1940). Allegations of fact which are not frivolous or fanciful are sufficient to support a motion to disqualify. **State ex rel Brown v. Dewell**, 131 Fla. 536, 170 So. 695 (1938). The facts in a motion to disqualify need only show a "well-grounded fear," that a litigant will not receive a fair proceeding. **McKenzie v. Superkids Bargain Store**, 565 So.2d 1332 (Fla. 1990). The question of disqualification focuses only upon matters upon which a litigant may reasonably question fairness rather than upon the perception of the ability to act fairly and impartially. **Mackenzie v. Superkids**.

Sub judice, Sankel's misconduct is a material issue. There is no likelihood that she will thoroughly, fairly and reasonably scrutinize her own misconduct. Sankel therefore has a material conflict of interest in as Bar Counsel, cloaked with the power and authority of this Court and under the foregoing authority should be disqualified

CALVIN DAVID FOX

State of Florida
County of Palm Beach

CAME AND APPEARED, before me the undersigned authority, Calvin David Fox, who first being sworn deposes and says that the foregoing is true and correct to the best of his information and belief.

NOTARY PUBLIC

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that this Court will strike the appearance of Arlene Sankel in this cause and require that the Florida Bar cause independent counsel to appear in this cause in order to allow a fair, just and reasonable response and consideration of this cause.

CALVIN DAVID FOX
Florida Bar No. 192098
Post Office Box 7900
Jupiter, Florida 33468
(954) 383-5943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Motion to Strike and Disqualify was caused to be served on this ____ day of August 2008 upon the Florida Bar by serving John Anthony Boggs, Director of the Legal Division, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; Arlene Sankel, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131; and Kenneth L. Marvin, 651 E. Jefferson Street, Tallahassee, Florida 32309-6584.

CALVIN DAVID FOX

IN THE SUPREME COURT OF FLORIDA
CASE NO. SC08-1328

CALVIN DAVID FOX,
Petitioner/Respondent,
Vs.
[REPLY TO FLORIDA BAR RESPONSE]
THE FLORIDA BAR,
Respondent/Complaintant.
_____/

COMES NOW, the Petitioner/Respondent, CALVIN DAVID FOX, and submits this reply to the Florida Bar's Response, to wit:

1.) That the Petitioner is in receipt of a Response by the Florida Bar to the sworn facts in the Petitioner's petition. The writer does not deny any of the sworn allegations. The writer only replies that the Petition to Vacate should be denied because the Petitioner has not complied with the September 1997 subpoena.

2.) That the writer overlooks that all bank records were obtained by the Florida Bar examiner for any accounts that the Petitioner was signatory to and the Florida Bar examiner testified that there was no reason to suspect that there was any problem with any account.

3.) That there are no complaints of any impropriety by anyone prior to the witch hunt initiated by the writer upon the frivolous complaint

of Jon Serbin and none since the frivolous complaint of Jon Serbin.

4.) That the Petitioner did maintain any trust account for the distribution of any monies since this Court's order on November 24, 1999.

5.) That records of client files were destroyed in a 100 year flood after a nineteen (19) inch rain in eight hours at 333 S.E. 3rd Avenue, Dania, Beach , Florida prior to February 29, 2000.

6.) That any remaining records of the clients the undersigned prior to August 1992 were in the offices and a firm warehouse for Tauler & Fox, P.A., which were taken by Elena Tauler, whom this Court subsequently suspended and reinstated last year.

7.) That the writer does not dispute that the September 1997 subpoena was predicated upon a frivolous complaint, which was pursued based upon misconduct and improprieties listed at nauseum in the complaint of the Petitioner.

8.) That but for the improprieties, misconduct and improper motivation of Florida Bar counsel, this matter should have been resolved in 1996 upon the frivolous complaint of Jon Serbin as Bar Counsel Wenzel did at the February 29, 2000 hearing demonstrating that there was no cause to believe that the undersigned had done anything improper.

9.) That this Court's temporary suspension order of November 24, 1999 was obtained through misconduct and improprieties; based upon a 1997 subpoena which was not properly noticed or heard; at an ex parte hearing which should have never happened; for which the motions for protective orders and repeated rejection by other grievance committees was not considered; and was reviewed by

a hearing officer, who had manifest ethical conflicts of which he was well aware.

10.) Inasmuch as the writer has not denied the sworn allegations and record references, which themselves present a prima facia case to vacate this Court's November 24, 1999 order, the sworn allegation s are admitted.

11.) That the bad faith of the writer is demonstrated in that for nine (9) years the Florida Bar has failed to respond or has indicated it just does not know what to respond. Bar counsel Wenzel said there was no reason for any subpoena and that the Florida Bar always had access to any records of the trust accounting of the undersigned. The reason the writer pursued the subpoena without any basis to do so was to engage in a witch hunt----which was revealed at the hearing on February 29, 2000 as being based upon a frivolous complaint and without any basis nor any complaints by anyone.

WHEREFORE, the Petitioner, CALVIN DAVID FOX, prays that this Court will grant the relief as requested in the Petition.

CALVIN DAVID FOX
Florida Bar No. 192098
P.O. Box 7900
Jupiter, Florida 33468
(954) 383-5943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response was caused to be served on September 6, 2008 upon Arlene Sankel, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131 and Kenneth L. Marvin, The Florida Bar, 651

East Jefferson Street, Tallahassee, Florida 32399-2300.

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR, CASE NO. SC08-1328
Lower Tribunal No. 2009-50,075(11I)
Former Case No. 92,484

Petitioner/Respondent,

MOTION FOR REHEARING

CALVIN DAVID FOX,

Respondent/Petitioner.

_____/

COMES NOW, the Respondent/Petitioner, CALVIN DAVID FOX, by and through his own counsel, and submits this, Motion for Rehearing, for plain error in this Court's dismissal herein, to wit:

1.) That the Respondent has received an order from this Court captioned as indicated above, dismissing the "Verified Petition to Vacate Ongoing

Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc." This Court has overlooked that the order of temporary suspension does not allow a petition for reinstatement.

I. DENIAL OF DUE PROCESS

2.) That the Court's dismissal is erroneously predicated upon proceedings in Lower Tribunal No. 2009-50,075(11I).

3.) That this Court has overlooked and misapprehended that Florida Bar Committee 11I Case No. 2009-50,075(11I) is **not** the underlying lower tribunal case herein and the Florida Bar has provided the Respondent with no notice, documents, pleadings, or papers in Lower Tribunal Case 2009-50,075(11I) nor any such pleadings, papers or things filed in this case.

4.) That the Respondent is unaware of any activity by Committee 11I since the hearing on **February 29, 2000** , in which Committee 11I heard from all witnesses and **the Florida Bar auditor, who had all trust account records**, subpoenaed in 1997. The Bar Auditor testified that nothing in the records that indicated the Respondent had done anything wrong.

5.) That the Respondent has no knowledge of any proceedings before Committee 11I, since the Committee's letter on **March 14, 2000** in which Committee 11I issued its unanimous finding of no probable cause that the Respondent had done anything wrong.

6.) That minimal due process requires that the Respondent be provided with Notice, Pleadings

and papers and an opportunity to respond upon the alleged proceedings in Lower Tribunal Case 2009-50,075(11I).

II. **COMPLIANCE WITH 1997 SUBPOENA**

7.) That the Court has overlooked and failed to appreciate that the defense by the Florida Bar to the present petition is a sham. The Court has overlooked that ten (10) years ago, on **February 29, 2000**, Committee 11I heard from all witnesses and **the Florida Bar auditor, who had all trust records**, available for the 1997 subpoena. The Auditor testified that there was nothing in the records which indicated the Respondent had done anything wrong. **Exhibit A.** There are no other records. There have been no other complaints since Jon Serbin's frivolous 1996 complaint herein.

9.) That this Court has overlooked and misapprehended that the Respondent has replied, herein, that there are no other records to produce other than what the Florida Bar already has. The Respondent also said he unable to provide any more records other than what the Florida Bar had at the hearing on February 29, 2000. **Id**.

10.) That the Court has overlooked that ten (10) years ago on **March 14, 2000**, Committee 11I issued its unanimous written opinion of no probable cause that the Respondent had done anything wrong. **Id.**

III. **PROSECUTORIAL DELAY; DENIAL OF DUE PROCESS**

11.) That this Court has overlooked and misapprehended that the order of temporary suspension does not allow for a petition for reinstatement. The delay herein has been unconscionable and a shock to the conscience of the

Bar. **Exhibit A**. The only activity in this cause for more than ten (10) years, have been pleas by the President of the Florida Bar, and the undersigned on **more** than seven (7) occasions since March 14, 2000. The only responses have been false assurances by Boggs, this Court's employee. **See**, **Exhibit B** (excerpt); **compare**, **Florida Bar v. James O'Connor**, Fla,Ct.Case No. SC03-1738, Opinion Filed October 19, 1996 (Upon first inquiry, Bar sends Respondent, "Reinstatement Manual").

Furthermore, a temporary suspension which is far beyond reasonable must be considered by this Court. **Compare**, **e.g. The Florida Bar v. Walter Benton Dunagan**, Fla. S.Ct. Case SC95,720, opinion filed November 30, 2000, at p6 (Upon a suspension of ninety (90) days for trust account irregularities----"Secondly and more importantly, we take into consideration that Dunagan now has been suspended for more than six times the originally imposed period of suspension")

In the present cause this Court has overlooked that the Florida Bar has always had access to and, for ten years since **February 29, 2000**, has had all the documents available and testimony from its own the Florida Bar Auditor **more than ten years ago** that the undersigned had done nothing wrong. **Compare**, R.Reg.Fla.Bar 3-7.2(f)(3) (three years for **felony** conviction), **e.g.**, **The Florida Bar v. Hochman**, Fla.S.Ct. Case No. SC00-100, opinion filed, April 4, 2002 (stealing from client; felony grand theft; drugs); **Commision on Lawyer Regulation**, Report (April 18, 2006)(Recomm. 5).

IV. **REVIEW OF PROSECUTORIAL MISCONDUCT**

13.) Finally, this Court has overlooked and misapplied the standard of review for the complaint

herein of misconduct by the employees of this Court, who are prosecutors. In **The Florida Bar v. Cox**, 794 So.2d 1278, 1282 (Fla. 2001) the Court explained that prosecutors must be held to the highest standard because of their unique powers and responsibilities. **See, also, Ruiz v. State**, 743 So.2d 1, 8-9 (Fla. 1999)(vacating death sentence).

In the present cause, this Court has overlooked and misapprehended the standard for review of the undisputed, chronic misconduct of its prosecutors, which has led to the improper result herein and continued obstruction of the final result. **See, Exhibit A**. In **United States v. Berger**, 295 U.S. 78, 88 (1935), the Court explained it is the duty of this Court to act in the face of misconduct by prosecutors:

"[W]hile [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just one."

In the present cause, this Court has overlooked, among other things, that the prosecutors, a.) used improper tactics and repeated improper contact with a represented client, who refused to make a complaint; b.) harassed the client of the undersigned to make a complaint for almost two years, where she refused to do so; and 3.), ultimately, employed this Court's prosecutor's practice of ex parte contact with the trier of fact to boost their case. Even after the 11I Committee hearing on February 29, 2000, where the only records available were produced and their own auditor said there was

nothing to suggest the undersigned had done anything improper, this Court's prosecutors deliberately delayed due process herein, far beyond any reasonable or prudent purpose.

Finally this Court has overlooked that its prosecutors have improperly ignored that the 11I Committee issued its unanimous opinion on March 14, 2000 that the undersigned had done nothing improper upon the underlying complaint either. Under the standard for prosecutorial review established in, **Berger v. United States**, which this Court adopted in **Cox**, rehearing should be granted and the "temporary" suspension herein should be vacated.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Respondent/Petitioner, CALVIN DAVID FOX, prays that this Court will grant rehearing, vacate the dismissal, require that the Florida Bar provide all files and records considered herein in Lower Tribunal Case 2009-50,075(11I); that upon further consideration, vacate the temporary suspension; and furthermore, that this Court will and direct that Calvin David Fox's Petition to the Attorney-Client Task Force be directed to appropriate Committees of the Florida Bar; and that the Court will also require a response by the Florida Bar to the letters of July 31, 2008 and August 21, 2008 to the Florida Bar, which are filed in this cause.

CALVIN DAVID FOX
Florida Bar No. 192098
P.O. Box 7900
Jupiter, Florida 33468
(954) 383-5943

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

50,075(11I)

CASE NO. SC08-1328
Lower Tribunal No. 2009-

Former Case No. 92,484

Petitioner/Respondent,

vs

I. **AFFIDAVIT TO CORRECT REPORT OF ARLENE SANKEL OF NO COMPLIANCE**
II **REQUEST FOR ORAL ARGUMENT**
III **MOTION TO DISCLOSE FILES**

CALVIN DAVID FOX,

Respondent/Petitioner.

_____/

COMES NOW, the Respondent/Petitioner, CALVIN DAVID FOX, by and through his own counsel, and submits this, Affidavit to Correct Arlene Sankels' Report of No Compliance; Request for Oral Argument, and Motion to Disclose Files, to wit:

1.) That the Respondent has received an order from this Court captioned as indicated above denying

rehearing of the dismissal of the "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc."

AFFIDAVIT TO FORCE FLORIDA BAR TO REPORT COMPLIANCE WITH 1997 SUBPOENA

2.) The order of **temporary** suspension in Case 92,484, which this Court's Clerk Sid White reported to the Respondent was prepared for this Court by the Florida Bar, is to force compliance with the September 1997, 11I Grievance Committee subpoena and provides only that the suspension is temporary until the Florida Bar reports to this Court that the Respondent has complied with the September 1997 Grievance Committee Subpoena. Said order, prepared **by the Florida Bar**, has no other conditions and does not provide for a petition for reinstatement. The order has never been amended or modified.

3.) That Arlene Sankel has reported to this Court that the undersigned has not complied with the 1997 11I Grievance Committee subpoena, which is the subject of Florida Supreme Court Case 92,484. Sankel's report is misleading and is based upon a condition, which Ms. Sankel knows cannot occur.

4.) The issue of the 1997 11I subpoena was resolved by Mr. Gregg Wenzel of the Florida Bar Miami office. After Mr. Wenzel left the offices of the Florida bar, the Respondent hired lawyer, Andrew Berman 305.945.1851, to resolve the inability to provide any more documents for the 1997 11I Committee subpoena in this cause. However, Mr. Berman reported that Arlene Sankel was consumed by a blind rage against the undersigned and conversations with her were so ugly as to be not

worth relating. **See**, "Verified Motion to Strike Notice of Appearance and Disqualify Arlene Sankel," filed herein.

5.) On or about **July 20, 1998** the Respondent had told Gregg Wenzel of the Miami office of the Florida Bar that the Respondent did not have records to produce. Gregg Wenzel replied to the Respondent that he did **not** need the 1997 11I Committee subpoena to get all of the Respondent's Trust bank records and therefore went and got them for the Florida Bar's Auditor.

6.) Therefore on **February 29, 2000**, Committee 11I heard from all witnesses and **the Florida Bar auditor, who had all the Respondent's bank trust account records**, available for the 1997 subpoena. The Auditor testified that there was nothing in the records which indicated the Respondent had done anything wrong. In addition to the Florida Bar auditor, Gregg Wenzel was the only other official present for the Florida Bar.

7.) Arlene Sankel was **not** present at the February 29, 2000 hearing and **has no first hand knowledge** of the hearing. The undersigned hired an attorney familiar with Florida Bar matters,

8.) That the undersigned told Wenzel, after the Florida Bar Auditor had testified at the hearing on **February 29, 2000** that the Respondent **had no other records to produce**. The Respondent is unable to non existent documents in order comply any further with the 1997 11I Committee subpoena and this Court's order of temporary suspension in Case 92,484.

Sankel knows that but wants that impossibility to continue as it has for ten years.

9.) On **March 14, 2000**, Committee 11I issued its unanimous written opinion of no probable cause that the Respondent had done anything wrong. **Id.**

10.) That there have been no timely complaints of any kind about the Respondent nor any reported to the Respondent since Jon Serbin's frivolous, groundless complaint herein in 1996.

11.) Therefore, on or about **June 5, 2001** the President-Elect of the Florida Bar, Todd Aronovitz met with Director Boggs and told him that I had **no other records to produce**. Mr. Boggs assured President Elect Aronovitz, that Boggs would look into the case, and that the Respondent was **not** an authorized target of the Miami office of the Florida Bar.

12.) On **December 4, 2001** the undersigned again wrote to Boggs of these circumstances, with a copy to Aronovitz. There was no response.

13.) On **January 29, 2002** Boggs wrote a letter to the undersigned, that he would advise the Respondent further before considering the Respondent's continuing suspension. No advice was ever forthcoming.

14.) On **June 5, 2003** Aronovitz as President of the Florida Bar forwarded the Respondent's complaint about the delay herein to the Florida Bar for a response. No response was forthcoming.

15.) On **April 15, 2004**, the Respondent forwarded his complaint herein to the Special Commission on Lawyer Regulation, which was investigating misconduct by the Florida Bar. That complaint was forwarded to Boggs, who responded incorrectly, "others have communicated with you" and that the Respondent must file a Petition for

Reinstatement. Boggs did not say if the Florida Bar would oppose reinstatement.

16.) The Respondents amended petition herein was filed on or about July 31, 2008 the Amended Petition was filed herein.

17.) On **August 21, 2008** the Respondent forwarded his Petition under Rule 2.140(a)(1) Florida Rules of Judicial Administration to Reform Rules 2-3.1 and 5-1.2(f)(1) to this Court's Clerk, which requires the Clerk of this Court to forward to all Florida Bar Committees and the Respondent specifically requested that it be forwarded to the Florida Bar's, "Attorney Client Task Force to Study Government Lawyering," Florida Bar News 10/01/17, at p.9. But this Court's Clerk ignored the mandatory language in the Rule and instead sent it only to an attorney for the Florida Bar, who promptly put it in the trash can. The Respondent had requested the Petition be returned if it was not going to be forwarded, but that was ignored.

18.) On **January 9, 2010** the also Respondent filed an application to serve on Justice Lewis' Commission on Professionalism, which this Court's clerk intercepted on **January 21, 2010**, saying that the Commission had considered and rejected my application.

19.) That the Respondent has replied that there are no other records to produce other than what the Florida Bar already has. The Respondent is unable to provide any more records other than what the Florida Bar had at the hearing on **February 29, 2000** and since then, the Florida Bar has been told that repeatedly.

20.) That the length of the Respondent's temporary suspension herein for failure to comply

with a subpoena is regarded as creating great "dismay" among attorneys, whose opinion this Court should care about.

21.) That a ten year suspension in the present circumstance, based upon a 1997 11I Committee subpoena, for which all financial records were produced on February 29, 2000 the impossibility of producing any other records to comply, is a travesty of justice and unconscionable. **See**, "Verified Motion to Disqualify Sankel," filed herein. There is nobody nor any process to protect herein in this circumstance. Indeed, the real cause of this travesty is the effort of the undersigned to protect his client's attorney client privilege against the onslaught of improper, illicit attacks by rogue lawyers employed by this Court.

CALVIN DAVID FOX

State of Florida

County of Palm Beach

CAME AND APPEARED, before me Calvin David Fox, who identifying himself with Florida Driver's License, swore and affirmed that the foregoing is true and correct to the best of his information and belief.

NOTARY PUBLIC

REQUEST FOR ORAL ARGUMENT

22.) That the Respondent would contend that oral argument would best benefit this Court to determine the merits of the proceedings herein and this motion.

23.) That the Respondent would request his right to examine all files of this Court and the Florida Bar with respect to any matter involving the 1997 11I Committee subpoena; and the new file number, 2009-50,075(11I)

MEMORANDUM

In the present cause, the standard for review of the undisputed, chronic misconduct of prosecutors, which has led to the improper result herein and continued obstruction of the final result. In **United States v. Berger**, 295 U.S. 78, 88 (1935), the Court explained it is the duty of this Court to act in the face of misconduct by prosecutors:

"[W]hile [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction, as it is to use every legitimate means to bring about a just one."

In the present cause, the prosecutors, a.) used improper tactics and repeated improper contact with a represented client, who refused to make a complaint; b.) harassed the client of the undersigned to make a complaint for almost two years, where she refused to do so; and 3.), ultimately, employed this Court's prosecutor's practice of ex parte contact with the trier of fact to boost their case. Even after the 11I Committee hearing on February 29, 2000, where the only records available were produced and their own auditor said there was nothing to suggest the

undersigned had done anything improper, this Court's prosecutors deliberately delayed due process herein, far beyond any reasonable or prudent purpose.

This Court's prosecutors have improperly ignored that the 11I Committee issued its unanimous opinion on March 14, 2000 that the undersigned had done nothing improper upon the underlying complaint either and that any further compliance with the Committee's 1997 subpoena is impossible. Under the standard for prosecutorial review established in, **Berger v. United States**, which this Court adopted in **Cox**, rehearing should be granted and the "temporary" suspension herein should be vacated.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Respondent/Petitioner, CALVIN DAVID FOX, prays that this Court will require that Sankel's report of no compliance be corrected; that this Court will conduct oral argument herein, and that this Court will require that the Florida Bar provide all files and records considered herein and in Lower Tribunal Case 2009-50,075(11I) and the 1997 llI Committee Subpoena case and this Court's case, 92,484; that upon further consideration, vacate the temporary suspension; and furthermore, that this Court will and direct that Calvin David Fox's Petition to the Attorney-Client Task Force be directed to appropriate Committees of the Florida Bar; and that the Court will also require a response by the Florida Bar to the letters of July 31, 2008 and August 21, 2008 to the Florida Bar, which are filed in this cause.

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
(305) 854-1037

November 23, 1992

Linda Serbin
6475 Pine Tree Drive Circle
Miami Beach, Florida 33141

Re: Contract for Legal Services

Dear Linda:

This will confirm our agreement to the following as our contract for legal services. Although I love you deeply, our personal life together must be put on hold. In particular, Jon could use our love making as a weapon in all the matters against him, especially your divorce.

First National Bank v. Jon Serbin and Linda Serbin
11 Cir. Case 92-13147-CA-24

This will confirm that I will appear in this cause as your attorney and attempt to set aside and stall the stipulation to foreclosure, which Jon Serbin; his attorney, Ira Gordon; and the Bank's attorney have coerced you into signing.

There is an acute conflict of interest in this and other matters in this agreement and therefore I will not be representing Jon and attorney Ira Gordon will

continue to represent Jon. In particular, I trust that you have not disclosed your affair with me to Ira.

This will be an extraordinarily difficult undertaking. We will likely be only able to delay this matter for up to six months in order to obtain a willing buyer such that you will not be required to sell your house at a firesale price on the Courthouse steps. This will confirm that we will endeavor to sell the house at or near the tax assessor's valuation of about $500,000.

We have agreed that my total fees for this representation which would include the present litigation and any subsequent and related litigation; and is unrelated to the success or outcome or our ability to obtain the foregoing value of $500,000 for the house; will be a flat, non-refundable fully earned fee of $25,000, which will be paid as you are able.

LINDA SERBIN v. JON SERBIN

This will confirm that you have consulted with me regarding a contested dissolution proceeding from Jon Serbin, who lives with you and your daughter, Bess Serbin at the above referenced address. The central reason for consulting with me for divorce arise from Jon's beating and rape of your daughter, Bess Serbin, since she was about nine (9) years old.

I have confirmed that Bess has attempted suicide several times; is prone to severe episodes of self-mutilation and has undergone several years of psychiatric care, which is reported in her pending

litigation in Bess Serbin v. Doral, 11th Cir. Case 91-57930-CA-15, which is discussed below.

This will confirm that I have urged you to allow me to present this matter to the State Attorney, which you have so far decline to do. I understand that the beatings and rapes of Bess by Jon and Jon's severe alcoholism have been the subject of several meetings with his family. I can understand your extreme reluctance to allow this matter to become public knowledge, but it is a severe offense and Bess' life has been ruined and she may yet kill herself. She has confirmed these beatings and rapes to me and has indicated that Jon threatens to resume them, despite all the locks on Bess' bedroom door. You must do something to stop this or allow me to proceed.

In addition to the foregoing, this will confirm that for about five (5) years you have been living and supporting both Jon and the house with your trust funds from your family. Jon has bled off moneys and assets from his Company, Serbin Fashions, which is in bankruptcy in In Re: Serbin Fashions, U.S. Southern District of Florida Bankr. Case 91-11699-BKC.

Based upon the foregoing and our discussions, I feel confident that you should remain in control of the remaining assets of the marriage, which principally consist of the house and its contents. You must pursue the allegations of the rape and beating of Bess Serbin. If the sickness and violence of Jon Serbin is not disclosed, his sickness and his alcoholism will remain your burden.

Finally, you must not disclose our long term and intimate relationship to Jon directly or indirectly. He would use those allegations as a weapon in your dissolution proceedings and to add me as a witness against you.

IN RE: SERBIN FASHIONS, INC.
U.S. Southern District of Fla. Case 91-11699 BKC

This case was filed on April 18, 1991 and involves the bankruptcy of Jon Serbin's business, Serbin Fashions. This does not involve you personally, except that you have supported the house and Jon because of his waste of the Company and its assets.

However, you have confirmed that Jon has lied under oath in this case; and you were aware of this at the time, as to the existence of and locations of assets and cash from Serbin Fashions to the Trustee and to attorneys for the Creditors.

You have similarly lied to the Trustee and/or the attorneys. You must not lie to anyone any further. It is a criminal act prosecuted by the U.S. Attorney. We may be able to urge your alcoholism and the threats of violence and coercion by Jon as a defense.

Additionally, if you are contacted any further in this matter you will refer all further inquiries to me. We will have to arrange the fees and costs of that proceeding as it occurs.

Bess Serbin v. Doral Equestrian Center
11th Cir. Case 91-57930

I have reviewed this matter with Bess and I have read the Court file. Malcolm Fromberg her present attorney has botched this case and the settlement, which he demanded Bess accept is greatly less than the case may be worth with a more aggressive attorney.

I have recommended referring this cause to enable me to work with Carlos Del Amo at the High, Stack firm to get Bess a much better result, which may including pushing the case to trial. Bess is enthusiastic about proceeding with this strategy. Malcolm has really beaten her up psychologically and worn her down to accept the pathetic settlement he has obtained.

The defense has been rattling its sword about using Bess' psychiatric records and the rapes and beatings by Jon as an intervening cause for her injuries. I think that such a strategy would blow up on the defense before a sympathetic jury.

My fees for this work will not cost you or Bess anything more. The High, Stack firm will pay my fees as a referral fee out of any proceeds obtained before or after judgment. Their separate agreement with Bess, includes me and all costs.

GENERAL MATTERS

In consideration of these agreements, I will also continue to represent you and Bess in all those other piddling legal matters, which seem to crop up.

I hope that you understand how I feel, but we can no longer act upon these feelings if I am to make these efforts on behalf of you and Bess. Instead, we must adhere to this formal agreement.

Finally, I would again urge you to allow me to proceed against Jon as to the rapes and beatings of Bess. It is the one matter, which will enable you to recover your life again and to perhaps save your daughter. Please.

Very truly yours,

CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
Miami, Florida 33245
(305) 854-1037

August 4, 1993

Linda Serbin
9241 Collins Avenue
Apartment 7
Surfside, Florida 33154

RE: First National Bank v. Serbin
11th Cir. Case No. 92-13147-CA-24

Dear Linda:

This will constitute my closing statement for the above referenced litigation.

This will confirm my receipt based upon our agreement to the sum of $25,000 as my earned legal fees on or about June 10, 1993.

This will also confirm that on June 15, 1991, before closing you asked me to reduce my fees and to remit $5,000 back from me.

The closing balance in this matter after my fees and the rebate to you in this matter as this date is therefore zero dollars.

I hope that everything is going well. At least we got more funds from the house than you ever thought possible.

Very truly yours,

CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

SUPREME COURT OF FLORIDA

Wednesday, November 24, 1999

THE FLORIDA BAR, CASE NO. 92,484
Complaintant,

Vs.

CALVIN D. FOX,
Respondent.
_____/

After review of the report of the referee and the briefs submitted by both the Florida Bar and Responent, we hereby approve the recommendation of the referee and suspend the Respondent frm (sic) the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997. This suspension shall be effective 30 days from the filing of this order so the Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this court (sic) in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed.

The suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period. Satisfactory compliance with the subpoena shall be stated in a notification to the referee by the Florida Bar. If the suspension becomes effective, it shall continue until

such time as notice of compliance is made by the Florida Bar. Any dispute as to whether compliance is satisfactory shall be determined by the referee.

Respondent's Motion to Strike Record and Motion to Discharge Notice of Noncompliance are hereby denied. Not final until time expires to file motion for rehearing and, if filed determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

Debbie Causseaux
Acting Clerk
Florida Supreme Court

Cc: Hon. Paul Siegel, Referee
Mr. Billy Jack Hendrix
Mr. Gregg D. Wenzel
Mr. Calvin David Fox

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complaintant,

File No. 97,70,3000(11I)

vs.

CALVIN D. FOX,
Respondent.
_____/

REPORT OF NO PROBABLE CAUSE

The [E]leventh Judicial Circuit Grievance Committee "I" found No Probable Cause in the above-referenced matter.

Pursuant to the provisions of Rule 3-7.4(j) of the Rules Regulating the Florida Bar, the undersigned by signature, signifies a finding of No Probable Cause by the Grievance Committee as to the referenced complaint.

Dated this 14th day of March 2000.

THOMAS M KARR, Chair
Eleventh Judicial Circuit
Grievance Committee "I"

cc. Arlene Kalish Sankel
Branch Staff Counsel
Calvin D. Fox, Respondent,
Jon & Linda Serbin, Complaintants.

THE FLORIDA BAR
Grievance Committee for the Eleventh Circuit

REPLY TO: Thomas M. Karr, Chair
Grievance Committee lII
200 S. Biscayne Blvd, Suite 4
Miami, Florida 33131

March 20, 2000
John & Linda Serbin
1111 Biscayne Boulevard Apt. 401
Miami, Florida 33181-3404

Re: Complaint against Calvin D. Fox
The Florida Bar File No. 97-70,3000(11I)

Dear Mr. & Mrs. Serbin:

You are advised that the above-referenced matter has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because:

There is insufficient evidence to support your allegation that the respondent improperly disbursed funds from his trust account.

Please be advised that our action does not preclude you from consulting with private counsel, nor does it preclude you from exercising any legal or equitable remedies which may be available to you.

Accordingly, we wish to advise you that we are closing our file in this matter. Sincerely,

THOMAS M. KARR, Chair
Grievance Committee 11"I"

Cc: Calvin D. Fox

IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,484

THE FLORIDA BAR,
Petitioner/Counter-Respondent,

vs.

CALVIN DAVID FOX,
Respondent/Petitioner.
_____/

VERIFIED MOTION TO DISQUALIFY

COMES NOW, the Respondent/Counterpetitioner CALVIN DAVID FOX,pursuant to Rule 3-7.6(g)(8) Rules of Discipline and Sections 38.02 and 38.10 Fla.Stat. and submits this Verified Motion to Disqualify, to wit:

A Previously formed adverse opinions

1.) That the present Referee is the same Paul Siegel who expressed preexisting adverse personal opinions concerning the undersigned before the present proceeding was assigned to him, arising from the following circumstances.

2.) That the undersigned ran for judge in 1988 against Judge Roy Gelber, who was subsequently convicted of taking bribes, which what the undersigned told the Miami Herald he would do based upon information received from [the] Gelber and Glass' former law office manager.

3.) That the campaign against the undersigned by Gelber was particularly ugly based upon allegations impuning the professional ability and integrity of the undersigned.

4.) That after the 1988 campaign and the indictment of Gelber, the undersigned and Paul Siegel both applied to the Judicial Nominating Commission and competed directly in that political arena.

5.) That during 1989 the woman attorney [who the undersigned will name in camera] who was living with the undersigned, commenced also "seeing" then attorney Paul Siegel.

6.) That during said relationship with the girlfriend of the undersigned and during the course of the competitive Judicial Nominating Commission process, Paul Siegel, expressed a **derogatory** opinion of the professionalism and integrity fo the undersigned arising from the campaign against Gelber and Siegel's investigation of the undersigned as a competitor in the Judicial Nominating Commission process.

7.) That in response the girlfriend also expressed that adverse opinions and remarks about Paul Siegel, which were made by the undersigned relating to the competition for the girlfriend, to Paul Siegel.

B. Previous litigation by the undersigned to block the nomination and to force an election between the undersigned and the Referee

8.) That after Judge Roy Gelber was indicted, convicted and removed from the Florida 11th Circuit Bench, the present Referee was nominated and appointed to the vacancy created by Gelber's removal.

9.) That in In re: Advisory Opinion to the Governor (Judicial Vacancies), Fla. Supreme Court Case 79,694 and related complaints the undersigned sought to block the nomination and appointment of your present Referee to the 11th Circuit Court and to force an election by the undersigned against the Referee for the Referee's present judicial position.

10.) That in addition to the political process before the Judicial Nominating Committee as noted above, the undersigned was previously an adversary of the present referee to prevent him from retaining his present job in the Florida Supreme Court and in the political arena involving the Governor's appointment process and trying to force an electoral process.

C. Ex parte contact with the Referee

11.) That during these proceedings the Referee has only communicated to have notices sent and to schedule hearings with opposing counsel for the Florida Bar.

12.) That on about July 16, 1988 the Referee again contacted opposing counsel **ex parte** to reschedule the final hearing set in this matter at the convenience of the Florida Bar.

13.) That in violation of the Adminstrative Orders in this jurisdiction, there was no effort by the Referee or opposing counsel to contact the undersigned with regard to said rescheduling.

14.) That as a consequence of said **ex parte** communication, the undersigned was forced to go through an ordeal of an emergency motion and hearing to reset said hearing.

15.) That the routine **ex parte** communications with only one side of a case is unlawful. **See, e.g., Rose v. State**, 601 So.2d 1181, at 1183 (Fla. 1992).

16.) That in addition to the foregoing, the Referee announced on **June 10, 1998** at the first and only previous hearing in this cause, that he would not consider any of the complaint of the undersigned in the Florida Supreme Court that the undersigned had been denied due process in this cause [upon which this matter has been remanded], because "**we are way past that**."

17.) That there is an appearance in this cause, that the Referee is partial in favor of the Florida Bar.

18.) That the reason for the foregoing appearance is also related to the following routine practice of the Florida Bar of warming up the Referee with **ex parte** Public Relations material and commentary, which is **not** provided to the Respondent.

19.) That in examining another Florida Bar complaint filed against the undersigned, which was also handled by your Referee on May 15, 1997, the undersigned discovered two volumes fo commentary and cases provided **ex parte** by the Florida Bar, which are entitled, "Referee Manual" and "Florida Standards for Imposing Discipline," which have been provided to the Referee **ex parte** without notice or copies to the undersigned. Upon reason and belief, the same public relations material for the Florida Bar has been submitted **ex parte** to the Referee in this case.

20.) That the foregoing matters do not just contain a recitation of the necessary or applicable rules. These matters are filled with commentary and opinion by the Florida Bar as to what the Referee

should consider in determining the rights fo the undersigned and the issues remanded to the Referee in this case.

21.) That the providing of said **ex parte** commentary and opinion and Public Relations material in said materials to the Referee is unlawful. See, e.g., Rose v. State, 601 So.2d 1181, at 1183 (Fla. 1992).

22.) That as a consequence of the foregoing the undersigned believes that he has not and will not receive a fair proceeding before the Referee and that the Referee is biased and prejudiced against the undersigned.

23.) That the undersigned has not presented this motion before this time because of the futility of doing so prior to the hearing in this matter, where in another matter, the present Referee has previously declined this motion on the grounds recited in paragraphs 1 to 7 and 18 to 21. Additionally, the grounds recited in paragraphs 8 to 13 were only discovered just prior to the filing of this motion.

24.) I hereby swear upon penalty of perjury that the foregoing is true and correct within the meaning and intent of Title 28 U.S. Code, Section 1746. Executed on this 12trh Day of August 1998.

CALVIN DAVID FOX

CALVIN DAVID FOX
160 Barbados Drive, Jupiter, Fl. 33458
foxfireforty7@bellsouth.net

WORKING EXPERIENCE:

Corporate Security and Safety;
Dad Survivor Series, 1985 to date.
Tutor: English, Reading, Writing and Comp.;
General Counsel Tutor Time Systems, 5 years;
Senior Assistant Attorney General, 10 years;
Assistant County Attorney, 2 years.

EDUCATION:

Palm Beach State College,
Electrical Power Technology, A.S. (Dec. 2010).
Nova Southeastern University,
Doctorate in Higher Education studies.
Tulane University School of Law, J.D., with honors
Chairman, Honor Board,
Moot Court Competition finalist,
Instructor, Legal Research and Writing, by Dean and Faculty.
Tulane University, B.A.
4 year NCAA Football scholarship,
Assistant Football Coach,
National President, USAF ROTC Arnold Air Honor Society,
General Dynamics Outstanding Cadet Award.

LICENSES, TRAINING AND CONTINUING EDUCATION:
200 hours of Certified Mediator Training & Arbitrator Training; CLE 1985 to 2010; Dale Carnegie Instructor in Public Speaking and Communication.; Medical Institute for Professionals; Electronic Legal Research, Paralegal and Certified Grant Writer, University of Miami; Red Cross Wilderness First Aid; CPR Certified; Security Officer "D" and "G"; Scoutmaster, Boy Scouts of America; Wood Badge, BS A, etc.

MILITARY:
First Lieutenant, United States Air Force Judge Advocate and USAF reserve officer 10 years.

COMMUNITY SERVICE:
United Way Mental Health Funding Panels; Juvenile Diabetes Foundation; Certified Scoutmaster; BSA Executive Wood Badge Award; Instructor Drug Enforcement Administration; Coach, Dania Beach Optimists Youth Athletic Leagues; Dania Beach Main Street Volunteer Projects; Chairman, School Advisory Forum for Broward County School Board; Neighbors for New Haven; PBSC Housing Rehabilitation Projects, etc.

PERSONAL INTERESTS:
Scoutmaster, Eagle Scout advisor, Eagle Merit Badge Counselor; Coach, Youth baseball and Youth soccer; biking and camping in Florida and the

mountains of North Carolina and raising, Ernest Escobar Fox, 19(star athlete); Robert Calvin Fox, age 16 (Eagle Scout, Dreyfoos School of the Arts); and Gabriel Michael Fox, age 15 (Eagle Scout, Dreyfoos School of the Arts); advice and counsel to attorney, Calvin Manuel Fox, age 25.

SAMPLE OF CASES WON:

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1985)(reversing the U.S. 11th Circuit sitting en banc, setting standard for review of ineffective counsel claims);
Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(reversing the Florida Third District sitting in the first en banc case in Florida, upholding use of profile for drug couriers);
Chandler v. Florida, 449 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)(reversing fifty (50) years of federal precedent and establishing the right of the people to view trials through cameras in the courtroom);
Florida v. Rodriguez, 463 U.S. 940, 103 S.Ct. 3529, 77 L.Ed.2d 1298 (1983)(reversing one line, per curiam opinion, after granting rehearing of denial of certiorari);
Florida v. Rodriguez, 469 U.S. 1, 105 S.Ct. 3529, 83 L.Ed.2d 165 (1984) (reversing same case again when State court failed to follow previous reversal);

Florida v. Zafra, 436 U.S. 1202, 103 S.Ct. 3529, 77 L.Ed.2d 1382 (1983)
(reversing lower state court on standard for 4th Amendment searches and seizures of vessels in "customs waters."
State v. Benitez, 395 So.2d 514 (Fla. 1981)(reversing hundreds of cases statewide which had declared Section 893.135 Fla. Stat., the new "trafficking" statute, unconstitutional);
State v. Allen, 362 So.2d 10 (Fla. 1978)(reversing hundreds of appellate and trial cases, which declared Section 812.014 Fla.Stat., the new "theft statute," unconstitutional).

No. 10-677

IN THE

Supreme Court of the United States

CALVIN DAVID FOX,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTIONS PRESENTED

Whether the May 27, 2010 order of the Florida Supreme Court denying Calvin David Fox's "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc," and the Florida Supreme Court's August 10, 2010 order denying Mr. Fox's subsequent motion for rehearing, decided an important federal question in a way that conflicts with the decision of another state court of last resort, a federal court of appeal, or with a relevant decision of this Court.

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STATEMENT OF THE CASE

Introduction

Calvin David Fox (the "Petitioner") alleges that the Florida Supreme Court orders in question are the result of a "vendetta" against him by "rogue [Florida Bar] prosecutors" who "routinely provided secret propaganda and memoranda on how to prosecute" Petitioner to the Referee[1] and who engaged in the "secret interrogation" of his client. Yet, the Petitioner fails to provide any record cites or any other documentation to credibly support these allegations. Moreover, the Petitioner omits crucial facts from his petition.

The Petitioner was suspended by The Florida Supreme Court from the practice of law by order dated November 24, 1999, for failure to comply with a subpoena issued by a grievance committee of The Florida Bar pertaining to the Petitioner's trust account. (App. 1a-2a). The Florida Supreme Court's order specifies that the Petitioner's suspension shall continue until such time as he complies with the subpoena. (App. 1a). Despite representations in the petition to the contrary, the Petitioner has never complied with the subpoena.

Also, the Petitioner's suspension from the practice of law has already been the subject of two proceedings before the Florida Supreme Court, a federal court case in which the Eleventh Circuit Court of Appeals wrote an opinion affirming the district court's dismissal of the Petitioner's

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1. A referee is a judge or retired judge who is appointed by the Florida Supreme Court to conduct lawyer disciplinary proceedings. R. Regulating Fla. Bar 3-2.1(l).

case, and two prior petitions for a writ of certiorari to this Court, both of which were denied.

The relevant facts pertaining to this matter, and its procedural history, are set forth in greater detail below.

Relevant Facts and Procedural History

In 1996, a complaint was filed by Jon Serbin with The Florida Bar alleging that funds in the Petitioner's trust account had not been properly disbursed to a client of the Petitioner, Linda Serbin, despite requests to do so. As a result of that complaint, a grievance committee of The Florida Bar issued a subpoena on September 22, 1997. (App. 3a-5a). The subpoena required the production of bank statements, canceled checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, and bank and client reconciliations for trust accounts for the time period May 1, 1993 until the date of the subpoena. (App. 5a). The subpoena required the documents to be produced by October 13, 1997. The Petitioner objected to the subpoena stating that it would require the disclosure of confidences of his client. (App. 8a-9a, 11a).

Petitioner's client, Linda Serbin, testified before the grievance committee on January 20, 1998, that the Petitioner had not disbursed funds to her which belonged to her. (App. 14a-17a). Subsequently, in June 1998, Linda Serbin by affidavit joined in Jon Serbin's complaint against the Petitioner. (App. 18a-19a). Thereafter, on August 14, 1998, pursuant to procedures set forth in the Rules Regulating The Florida Bar, a Referee heard the issue of noncompliance. (App. 20a). At the hearing, the Petitioner represented and stated multiple times that in light of Ms.

Serbin's testimony and affidavit, he would produce the documents requested by the subpoena by August 28, 1998. (App. 21a-25a). However, the Petitioner did not produce the documents. Therefore, on September 4, 1998, the Referee issued a finding of no good cause for the non-compliance and recommended to the Florida Supreme Court that the Petitioner be suspended until such time as he was in compliance with the subpoena.[2] (App. 26a-28a).

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2. The hearing on noncompliance and subsequent suspension by the Florida Supreme Court were conducted in accordance with the procedure set forth in former Rule 5-1.2(f), Rules Regulating The Florida Bar. At the time of the Petitioner's initial suspension, Rule 5-1.2(f) provided in pertinent part that:

> Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a grievance committee or a referee shall first find that no good cause exists for failure to comply. A grievance committee or referee shall hear the issue of noncompliance and issue findings thereon within 30 days of the request for issuance of the notice of noncompliance.
>
> After notice is filed with the Supreme Court of Florida, by The Florida Bar, that a member of the bar has failed to fully comply with a properly issued subpoena directing the production of any trust accounting records which are required by these rules, unless good cause for the failure to comply is shown, the member may be suspended from the practice of law in Florida, by order of the Supreme Court of Florida, until such time as the member fully complies with the subpoena and/or until further order of the court.

R. Regulating Fla. Bar 5-1.2(f)(2) and (3) (1997); *The Florida Bar Re Amendments to Rules Regulating The Florida Bar,* 697 So. 2d 115, 133 (Fla. 1997).

The Petitioner's noncompliance with the subpoena continued. Therefore, on December 1, 1998, The Florida Bar grievance committee issued a subpoena to Commercebank for the Petitioner's trust account documents. (App. 29a-31a). Documents were then produced by Commercebank to The Florida Bar for the period of May 28, 1993, the date on which the trust account was opened, to April 24, 1995, the date on which the account was closed.

Meanwhile, the Petitioner appealed the Referee's finding of noncompliance and recommendation of suspension to the Florida Supreme Court, and the issue was fully briefed. *The Florida Bar v. Calvin D. Fox,* Case No. 92,484.[3] On November 24, 1999, the Florida Supreme Court issued an order approving the recommendation of the Referee and suspending the Petitioner from the practice of law until such time as he is in compliance with the subpoena. (App. 1a-2a). The Court further added that the suspension would not go into effect if the Petitioner complied with the subpoena within 30 days from the filing of the order. (App. 2a). The Petitioner did not comply, and the suspension went into effect.

Following a full hearing, and after review of the documents pertaining to the Petitioner's trust account that were produced to The Florida Bar by Commercebank, the grievance committee issued a finding of no probable cause on March 14, 2000 in the Serbin matter. (App. 32a-33a). Subsequently, the Petitioner filed a petition for a writ of

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A similar procedure is now codified at Rule 5-1.2(g) and Rule 3-7.11(d) and (f), Rules Regulating The Florida Bar.

3. See online docket at http://jweb.flcourts.org/pls/docket/ds_docket_search%20

certiorari with this Court seeking review of the Florida Supreme Court's order of suspension. *Fox v. The Florida Bar,* United States Supreme Court Case No. 99-1887. The Court denied the petition on October 2, 2000. (App. 40a).

A review by the Bar's auditor of the Petitioner's trust account records that were produced by Commercebank raised several other questions with regard to the Petitioner's trust account. In 2002, in response to an inquiry from the Petitioner pertaining to his continued suspension, John Anthony Boggs, the Director of the Legal Division of The Florida Bar, reminded the Petitioner of the other issues surrounding his trust account, that the Bar had never received any records for Petitioner's trust account for the time period after April 1995, and that it remained the obligation of the Petitioner to keep and produce trust account records. (App. 34a-39a). The Petitioner still failed to produce the trust account records requested by the subpoena.

In 2004, the Petitioner filed an action in federal court challenging his suspension alleging a violation of his due process rights under the Florida and federal constitutions. *See Fox v. Florida,* 138 Fed. Appx. 194 (11th Cir. 2005). The Petitioner requested declaratory and injunctive relief quashing the disciplinary proceedings and reinstating Petitioner's license to practice law as well as damages. *Id.* The district court granted The Florida Bar's motion to dismiss and the Petitioner appealed. *Id.* The Eleventh Circuit Court of Appeal affirmed the dismissal on the basis of the *Rooker-Feldman* doctrine. *Id.* The Petitioner then filed a petition for a writ of certiorari with this Court, which was denied. *Fox v. The State of Florida,* United States Supreme Court Case No. 05-651.

In 2008, the Petitioner filed his "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc" with the Florida Supreme Court.[4] *Fox v. The Florida Bar*, Florida Supreme Court Case No. SC08-1328. The Bar responded that the Petitioner remained in noncompliance with the subpoena issued on September 22, 1997, and had yet to make a showing of good cause excusing his noncompliance. (App. 41a-44a). On May 27, 2010, the Florida Supreme Court dismissed the Petitioner's petition. (App. 45a-46a). The Petitioner filed a motion for rehearing that was denied by the Florida Supreme Court on August 19, 2010 (App. 47a-48a).

The Petitioner has now petitioned this Court for the third time for a writ of certiorari, this time alleging that the May 27, 2010 and August 19, 2010 orders of the Florida Supreme Court are in conflict with the laws of other states and with precedent of this Court. More specifically, the Petitioner alleges that:

(1) The orders as they pertain to Petitioner's suspension and Rule 3-7.11(d)(7)(B), Rules Regulating The Florida Bar (formerly codified as Rule 5-1.2(f)(1)) -- providing that members of the Bar, as a condition of practicing law in Florida, may not assert any privilege personal to the lawyer to the production of trust account records in any disciplinary proceeding -- are in conflict with the laws of other states and with *Spevack v. Klein*, 385 U.S. 511 (1967), and are otherwise a violation of Petition's right to due process.

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4. Such petition is contained in the Appendix to the Petition for Writ of Certiorari in this matter at A4-46.

(2) The Florida Bar's attorney disciplinary system allows the Bar to act as "prosecutor, judge and jury" and therefore the Florida Supreme Court orders are in conflict with *Goldstein v. Commission on Practice of Supreme Court*, 995 P.2d 923 (Mont. 2000), *In re Schlesinger*, 172 A.2d 835 (Pa. 1961), and with *In Re Murchison*, 349 U.S. 133 (1955).

(3) The orders allow prosecutorial misconduct in conflict with *United States v. Berger*, 295 U.S. 78 (1935)

REASONS FOR DENYING THE PETITION

I. THE FLORIDA SUPREME COURT'S ORDERS AT ISSUE DID NOT DECIDE AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT, A FEDERAL COURT OF APPEAL, OR WITH A RELEVANT DECISION OF THIS COURT.

Pursuant to Supreme Court Rule 10, to invoke the jurisdiction of this Court, the Petitioner should show that the Florida Supreme Court orders he challenges are in conflict with a state court of last resort, a federal court of appeals, or a decision of this Court. This he has not done.

A. The Florida Supreme Court Orders Denying Petitioner's Motion to Vacate His Suspension are Not in Conflict with *Spevack v. Klein* and Do Not Otherwise Violate Petitioner's Right to Due Process

In Florida:

> Members of the bar are under an obligation to maintain trust accounting records as required by these rules and, as a condition of the privilege of practicing law in Florida, may not assert any privilege personal to the lawyer that may be applicable to production of same in these disciplinary proceedings.

R. Regulating Fla. Bar 5-1.2(f)(1) (1997) (now codified as R. Regulating Fla. Bar 3-7.11(d)(7)(B)). Petitioner refers

to this rule as the "no defense" rule in his Petition and argues that the Florida Supreme Court orders entered in light of this rule are in conflict with *Spevack v. Klein*, 385 U.S. 511 (1967).[5]

In *Spevack*, the Court reviewed a matter where an attorney refused to produce financial records demanded by a subpoena duces tecum and refused to testify in his disciplinary proceeding on the basis that the production of documents and testimony would tend to incriminate him. 385 U.S. 512-13. The lower court had ordered the attorney disbarred, holding that the Fifth Amendment privilege against self-incrimination was not available to him in attorney disciplinary proceedings. *Id.* at 513. On review, this Court found that the disbarment could not be affirmed on the ground that the privilege was not applicable to the attorney. *Id.* at 518. The Court found that Fifth Amendment protection against self-incrimination extended to lawyers, and that it "should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." *Id.* at 514. Thus, it is clear from the Court's holding in *Spevack* that an attorney may not be disbarred simply for asserting the Fifth Amendment privilege.

The Court in *Spevack* expressly refused to consider the applicability of the "required records" doctrine enunciated in *Shapiro v. United States*, 335 U.S. 1 (1948). *Spevack*, 385 U.S. at 517. In *Shapiro*, the Court held that

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5. While the Petitioner generally asserts that the rule conflicts with rules in other states, he does not specifically cite to any such rules. Nor does he cite to any precedent from other states on this issue.

records required to be kept by law are public records outside the scope of the Fifth Amendment privilege. 335 U.S. at 17-19. Referring to *Shapiro* in his concurring opinion in *Spevack*, Justice Fortas stated:

> If this case presented the question whether a lawyer might be disbarred for refusal to keep or to produce, upon properly authorized and particularized demand, records which the lawyer was lawfully and properly required to keep by the State as a proper part of its functions in relation to him as licensor of his high calling, I should feel compelled to vote to affirm . . . .

Spevack, 385 U.S. at 520. *See also Baltimore City Dep't of Social Servs. v. Bouknight*, 493 U.S. 549, 556 (1990) (discussing *Shapiro* and recognizing that the Fifth Amendment could not be invoked to resist compliance with a regulatory scheme constructed to effect the State's public purposes unrelated to the enforcement of criminal laws).

A lawyer's trust account records have long been recognized in Florida as having a public aspect relating to the protection of clients and to the fitness of a member of The Florida Bar to practice law. *See The Florida Bar v. White*, 384 So. 2d 1266, 1267 (Fla. 1980). Therefore, a Florida lawyer's trust fund records are within the required records exception set forth in *Shapiro*, and reiterated in *Bouknight*, to the privilege against self-incrimination. *See id. See also State of Oklahoma Bar Ass'n v. Gasaway*, 863 P.2d 1189 (Okla. 1993); *Louisiana State Bar Ass'n v. Chatelain*, 513 So. 2d 1178 (La. 1987); *In re Kenney*, 504

N.E.2d 652 (Mass. 1987); *Unnamed Attorney v. Attorney Grievance Comm'n of Maryland*, 708 A.2d 667 (Md. Ct. App. 1998), *cert. denied*, 525 U.S. 874 (1998).

In any event, here, there are no criminal proceedings at issue. And the Petitioner has never alleged that the documents sought would deprive him of his Fifth Amendment right against self-incrimination. The Petitioner has only complained that the production of documents would violate the attorney-client privilege. *See, e.g.*, Petition for Writ of Certiorari at pp. iii, 31-33. This argument has no basis.

It is generally considered as a matter of law that bank records of an attorney client trust account are not the type of documents protected by the attorney-client privilege. *See, e.g., Reiserer v. United States*, 479 F.3d 1160, 1165 (9th Cir. 2007); *In re Grand Jury Subpoena*, 831 F.2d 225, 228 (11th Cir. 1987); *Gannet v. First Nat'l State Bank*, 546 F.2d 1072, 1075-76 (3d Cir. 1976), *cert. denied*, 431 U.S. 954 (1977); *Securities and Exchange Comm'n v. First Security Bank of Utah*, 447 F.2d 166, 167 (10th Cir. 1971), *cert. denied*, 404 U.S. 1038 (1972); *O'Donnell v. Sullivan*, 364 F.2d 43, 44 (1st Cir.), *cert. denied*, 385 U.S. 969 (1966); *Sunshine Behavioral Health Servs., Inc.*, 2009 WL 1850310 at *3 (M.D. Fla. 2009); *United States v. Bank of California*, 424 F. Supp. 220, 225 (N.D. Cal. 1976); *Doyle v. State Bar of California*, 648 P.2d 942, 946-47 (Cal. 1982); *Neely v. Commission for Lawyer Discipline*, 302 S.W.3d 331, 341 (Tex. Ct. App. 2009); *State v. Clark*, 630 So. 2d 493, 497 (Ala. Crim. App. 1993).

Moreover, in Florida, the attorney-client privilege must be claimed by, or on behalf of, the client. Fla. Stat.

§ 90.502(3) (2010). Here, any attorney client privilege claimed by the Petitioner's client, Linda Serbin, was effectively waived when she joined in the Bar complaint against Petitioner. This waiver was acknowledged by the Petitioner in correspondence to the Bar, and again at the hearing on noncompliance. (App. 22a-24a).

Furthermore, the Petitioner has never been disbarred. He has been suspended from the practice of law for the noncompliance with a subpoena after a hearing on the matter and after continued and ample opportunity to avert the suspension. Petitioner's noncompliance is in its thirteenth year, and he has consistently failed to demonstrate any reason or good cause for such continued noncompliance. While the Serbin complaint matter was closed by a finding of no probable cause, there are other issues with Petitioner's trust account that remain unresolved, and in any case, it does not excuse his disobedience of the lawful court order. As the Petitioner has been advised, he holds the "keys to the resolution of [his] dilemma." (App. 38a).

The Petitioner cannot show any conflict with *Spevack* or that he otherwise asserted a valid privilege to the subpoena of his trust account records.

B. The Florida Bar Has Not Improperly Acted as "Prosecutor, Judge and Jury" so as to Deny Petitioner Due Process

The Petitioner alleges that the Florida attorney disciplinary system improperly allows The Florida Bar to act as "prosecutor, judge and jury." Therefore, the Petitioner argues that this Court's decision in *In re*

Murchison, 349 U.S. 133 (1955), the Montana Supreme Court's decision in *Goldstein v. Commission on Practice of Supreme Court*, 995 P.2d 923 (Mont. 2000), *cert. denied*, 531 U.S. 918 (2000), and the Pennsylvania Supreme Court's decision in *In re Schlesinger* 172 A.2d 835 (Pa. 1961), require a finding that he has been denied due process. However, these decisions do not warrant such a finding.

In *In re Murchison*, this Court reviewed a matter in which a state judge acted as a "one-man grand jury" and compelled witnesses to testify before him in secret about possible crimes. 349 U.S. at 134-35. The judge had charged two witnesses with criminal contempt, one for perjury and the other for refusing to answer certain questions and then tried them himself, and convicted and sentenced them for contempt. 349 U.S. at 135. The Court found that the trial before the judge who was the complainant, indicter and prosecutor constituted a denial of the fair and impartial trial required by the due process clause. *Id.*

Subsequently, this Court reviewed the constitutionality of a state's administrative disciplinary system for physicians which combined investigatory and adjudicatory functions. *Withrow v. Larkin*, 421 U.S. 35 (1975). The Court found that the system was constitutional noting that bias in a decision maker is not presumed and must be proven, and that:

> [T]he case law, both federal and state, generally rejects the idea that the combination (of) judging (and) investigation functions is a denial of due process . . . . Similarly, our cases, although they reflect the substance of the problem, offer no support for the bald proposition applied

> in this case . . . that agency members who participate in an investigation are disqualified from adjudicating. The incredible variety of administrative mechanisms in this country will not yield to any single organizing principle.

Id. at 52. Significantly, the Court went on to state:

> Plainly enough, *Murchison* has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications. The Court did not purport to question . . . the Administrative Procedure Act and did not lay down any general principle that a judge before whom an alleged contempt is committed may not bring and preside over the ensuing contempt proceedings. The accepted rule is to the contrary.

Id. at 53. The Court went on to note that while the special facts and circumstances of a case in which investigatory and adjudicatory functions are combined may justify a conclusion that the risk of unfairness is intolerably high in that particular case, the processes utilized by the medical examining board at issue did not in themselves contain an unacceptable risk of bias. *Id.* at 54-55, 58. The Court upheld the constitutionality of the disciplinary system. *Id.* at 59.

Likewise, in the case cited by the Petitioner, *Goldstein v. Commission on Practice of Supreme Court*, the Montana Supreme Court cited *Withrow* and found that

the procedures followed by the eleven-person Commission on Practice of the Montana Supreme Court did not violate an attorney's due process rights even though both investigatory and initial adjudicatory functions were vested in the Commission. 995 P.2d at 927-28.[6] The court pointed out that the Commission was appointed by the Montana Supreme Court and made recommendations to the court regarding discipline, but that the Montana Supreme Court retained the sole responsibility for final adjudication of ethical violations. *Id.* at 925-27.

In *In re Schlesinger*, also cited by the Petitioner, the Pennsylvania Supreme Court held that an attorney was deprived of due process by a disbarment order where the functions of prosecutor, judge and jury, were combined in a single committee. 172 A.2d at 597. However, subsequently, the same court reviewed a matter where the state dental board had suspended a dentist's license. *State Dental Council and Examining Bd. v. Pollock*, 318 A.2d 910 (Pa. 1974). The court found that there was no due process violation in the administrative structure employed where the prosecutory and judicial functions were adequately separated. *Id.* at 915. The court distinguished *Schlesinger* and *Murchison* in which cases the same individuals actually participated in both the prosecutory and judicial roles. *Id.*

Here, in the performance of its disciplinary functions, The Florida Bar acts as an official arm of the Florida Supreme Court. *See* Ch. 1 Introduction, R. Regulating

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6. In his Petition for Writ of Certiorari at pp. 21-22, the Petitioner quotes from the dissenting opinion in *Goldstein*, rather than from the majority opinion.

Fla. Bar; *Carroll v. Gross*, 984 F.2d 392 (11th Cir.), *cert. denied*, 510 U.S. 893 (1993). However, the investigatory, prosecutorial and adjudicatory roles in the disciplinary process are not conducted by the same individuals. Bar staff handles investigatory and prosecutorial functions, R. Regulating Fla. Bar 3-7.3, but grievance committees are made up of private attorneys and individuals. R. Regulating Fla. Bar 3-3.4. Grievance committees also have an investigatory role as well as an adjudicatory role in as much as they make the findings of probable cause or no probable cause. R. Regulating Fla. Bar 3-7.4. Referees, who are judges or retired judges from the state court system, act in an adjudicatory role by conducting the disciplinary proceedings and making recommendations to the Florida Supreme Court. R. Regulating Fla. Bar 3-7.6. And it is the Florida Supreme Court that retains the sole responsibility for the final adjudication of all lawyer ethical violations. R. Regulating Fla. Bar 3-7.7. At bottom, the investigatory, prosecutorial and adjudicatory functions in the Florida lawyer disciplinary system are adequately divided so as not to contain an unacceptable risk of bias. Hence, the Florida Bar disciplinary system does not run afoul of *Murichson*, and is not in conflict with *Goldstein* or *Schlesinger*.

C. The Record is Devoid of Evidence of Prosecutorial Misconduct

The Petitioner maintains that the orders issued in this matter are in conflict with *United States v. Berger*, 295 U.S. 78 (1935). In *Berger*, a criminal case, this Court found that the prosecuting attorney:

> [o]verstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense is clearly shown by the record. He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and, in general, of conducting himself in a thoroughly indecorous and improper manner.
>
> ***
>
> In these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its nonexistence.... we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential.

295 U.S. at 84, 89.

In the case at bar, the Petitioner makes allegations of a "vendetta" against him by "rogue [Bar] prosecutors" who "routinely provided secret propaganda and memoranda on how to prosecute" Petitioner to the Referee and who engaged in the "secret interrogation" of his client. Petition for Writ of Certiorari at 9, 15, 31. However, the Petitioner presents no document, transcript, or other credible evidence, to support his allegations. Petitioner only asserts that the alleged vendetta is a result of his testimony as the former prosecutor in a death penalty case in proceedings to stay the death penalty. *Id.* at 9. His reasoning is that "lawyers employed by the state are like law enforcement officers -- they close ranks against those who appear to stand against them." *Id.* at A35. Indeed, Petitioner offers only speculative conclusions to support his allegations. He has alleged no specific factual allegations indicating that an employee or officer of The Florida Bar was acting outside the scope of their official duties or with bad faith in this matter. The record presented to the Court reflects that the conduct of The Florida Bar and its agents is consistent with the good faith performance of their official disciplinary functions.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE FLORIDA SUPREME COURT, DATED NOVEMBER 24, 1999 IN CASE NO. 92,484

SUPREME COURT OF FLORIDA

CASE NO. 92,484

WEDNESDAY, NOVEMBER 24, 1999

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

After review of the report of the referee and the briefs submitted by both the Florida Bar and Respondent, we hereby approve the recommendation of the referee and suspend the Respondent from the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997. This suspension shall be effective 30 days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this Court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this order is filed.

Appendix A

The suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period. Satisfactory compliance with the subpoena shall be stated in a notification to the referee by the Florida Bar. If the suspension becomes effective, it shall continue until such time as notice of compliance is made by the Florida Bar. Any dispute as to whether compliance is satisfactory shall be determined by the referee.

Respondent's Motion to Strike Record and Motion to Discharge Notice of Noncompliance are hereby denied.

Not final until time expires to file motion for rehearing and, if filed, determined. *The filing of a motion for rehearing shall not alter the effective date of this suspension.*

A True
TEST:

/s/_____
Debbie Causseaux
Acting Clerk, Supreme Court

KBB

cc: Hon. Paul Siegel, Referee
Mr. Billy Jack Hendrix
Mr. Gregg D. Wenzel
Mr. Calvin David Fox

APPENDIX B — SUBPOENA TO CALVIN D. FOX DATED SEPTEMBER 22, 1997 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

Witness Subpoena *Duces Tecum*

The Florida Bar File No. 97-70,300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX

Respondent.

To: Calvin D. Fox
Tutor-Time - Suite 450
One Park Place
Boca Raton, Florida

YOU ARE HEREBY COMMANDED to appear before Carlos Ruga, Staff Auditor of the Miami Office of The Florida Bar, duly appointed pursuant to the Rules Regulating The Florida Bar at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on the 13th day of October, 1997 at 10:00 am o'clock to testify in the above entitled proceeding, and to produce and bring with you at that time:

Appendix B

See addendum.

For failure to appear and testify as herein required, you will be deemed to be in contempt of the Supreme Court of Florida.

Dated this 22nd day of September 1997.

RETURN OF SERVICE
I CERTIFY that the foregoing subpoena was served this __ day of _____199___by

_____
(method of service)
Signature and Title of Person Making Service

THE FLORIDA BAR

/s/_____
LAWRENCE N. FRESHMAN, Chair
Eleventh Judicial Grievance Committee 11"I"

Appendix B

ADDENDUM TO SUBPOENA
CALVIN D. FOX, 97-70,300(11I)

The original bank statements, canceled checks, check stubs, deposit slips, receipt and disbursement journals, client ledger cards, bank and client reconciliations for any trust accounts wherein you have signatory capacity for the period of May 1, 1993 to the present.

APPENDIX C — MOTION FOR A PROTECTIVE ORDER DATED OCTOBER 13, 1997 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA

[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70, 300(11I)

THE FLORIDA BAR, by and
throught the complaint of Jon Serbin,

Complainant,

vs.

CALVIN DAVID FOX,

Respondent.

RESPONSE; REQUEST FOR ADDITIONAL TIME; MOTION FOR CLARIFICATION; MOTION FOR A PROTECTIVE ORDER NOTICE OF MAILING ADDRESS; AGREEMENT TO ACCEPT PROCESS

TO: LAWRENCE N. FRESHMAN
Chair, 11th Cir. Judicial Circuit
Grievance Committee "I"

COMES NOW, the Respondent, CALVIN DAVID FOX, and submits this Response; Request for Additional Time; Motion for Clarification; Motion for a Protective Order; and Notice of Mailing Address; Agreement for Process, to wit:

Appendix C

1.) That the undersigned is in receipt of a subpoena *duces tecum* served in the above referenced case at the offices of a client of the undersigned, in which the undersigned has been directed to provide financial records. ***Exhibit A***. Below stated is the correct mailing address and telephone number for the undersigned.

I.

2.) First of all, said subpoena was *improperly served* with the announcement that it was from the Florida Bar at the offices of a client of the .undersigned in order to cause maximum injury and embarrassment of the undersigned with his client, in this supposedly confidential matter.

3.) That the undersigned would respond to any subpoena of the Florida Bar for any matters by simply signing for the subpoena, which has worked just fine for all matters in which anyone has ever desired to serve the undersigned for any matter during the past twenty-two (22) years.

II.

4.) That the undersigned has been extremely ill for the past thirty days apparently arising from the effects of a mass in his lower left abdomen.

5.) That because of the foregoing and the intervening religious holidays, of Roshashana and Yom Kippur, the undersigned has been unable to address this matter.

6.) That the undersigned has been required to work and travel 70 to 80 hours a week for his principal corporate clients in critical and emergency and Court ordered proceedings, including mediation, hearing and injunctive relief in three cases in the U.S. District Courts in Illinois and Indiana; and the Superior Court for the State of New Jersey; and arbitration matters in Washington state and Florida for the past thirty days.

7.) That the undersigned has closed out all of his non-corporate clients, with the exception of the *Riteway* matter and one other case in which no trust funds have been required.

8.) That because of the foregoing and the matters recited herein, together with the daily business of the administration of the offices of the undersigned, he would request an additional thirty (30) days in which to respond to the -present subpoena.

III.

9.) That the only complaint ever forwarded to the undersigned in this cause is an undated complaint by Jon Serbin, which was apparently received by the Miami office of the Florida Bar on September 4, 1996. ***Exhibit B***. For the reasons repeatedly expressed to Ms. Linda Evans, the undersigned has been unable to respond to said complaint, because of his ethical obligation to Linda Serbin and Bess Serbin to maintain their privacy.

10.) That the only client the undersigned has ever represented at all times material to Jon Serbin's complaint

was his estranged wife, Linda Serbin. ***Composite Exhibit C.***

11.) That, Ms. Linda Serbin related to the undersigned on May 7, 1997, that she gave an interview to an investigator from the Miami office of the Florida Bar in April 1996. Ms. Linda Serbin, reported to the undersigned that she told the investigator that she did not wish to proceed with any complaint against the undersigned; that she had no complaint with the undersigned; that the money Jon Serbin was complaining about was never Jon Serbin's money; that she did not wish the undersigned to respond to the complaint and disclose matters very private to herself and Bess Serbin; and that she, Linda Serbin, would sign off on a closure of the complaint in this case.

12.) That on May 7, 1997, Ms. Serbin also agreed to forward the attached draft letter to the Florida Bar, after the undersigned was able to secure certain claims of Linda Serbin in the ongoing ***Riteway*** litigation, which have just been concluded during the past ten (10) days. ***Exhibit D.*** Ms. Serbin and the undersigned were unable to conclude this matter during the past Yom Kippur holiday, because of Ms. Serbin's busy schedule.

13.) That this committee has no probable cause to require the invasion of all clients' records, without any complaint from Linda Serbin, who was the only client of the undersigned in the underlying litigation, in ***First Union National Bank v. Linda Serbin***, 11th Cir. Case 92-13147-CA-24, which resulted in a settlement with the Plaintiff by closing and sale to avoid foreclosure and is the sole basis of the complaint by Jon Serbin.

Appendix C

14.) That the undersigned has no financial records of Jon Serbin, who at all times relevant to the complaint was not the client of the undersigned and had no claim to the funds he has related in the above referenced complaint.

15.) That the undersigned is confused and unable to respond to paragraph 1 of the subpoena he is in receipt of, in that Linda Serbin has made no complaint herein and in response to said subpoena would state that there are no joint financial records for the, "Serbin's money" in the possession or control of the undersigned and there has never been any fund, which he or anyone else designated as "the Serbin's money" and that he is in possession of no moneys belonging at any time to Jon Serbin.

IV.

16.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 11th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of ***Mabie v. Garden Street Management Company***, 397 So.2d 920 (Fla. 1981) and its progeny.

17.) That this Committee has no jurisdiction to consider this matter, where a previous Committee of the 17th Circuit considered and rejected the efforts of Ms. Elena Evans to cause this matter to proceed within the meaning and intent of ***Mabie v. Garden Street Management Company***, 397 So.2d 920 (Fla. 1981) and its progeny.

Appendix C

V.

18.) That the undersigned is confused and unable to respond to paragraph 2 of the subpoena in that it seems to be vague and overbroad in that it seems to request all records for any client, for who or for which the undersigned has ever maintained records since May 1, 1993, although the complaint in this cause is only by Jon Serbin, who was not his client.

19.) That the undersigned is in good faith responding to the "11I" committee with the foregoing reservations and is willing to respond further if required to do so, but would request clarification of the foregoing matters and more definite statement of whose records and what records the committee is seeking and what the basis for that claim is.

20.) That the undersigned hereby adopts all those responses and requests previously filed regarding his desire to maintain the confidences of and privacy of his clients, Linda Serbin and Bess Serbin.

21.) That in any event if the privacy and confidences of Linda Serbin and Bess Serbin must be revealed the undersigned would first request that these matters be revealed ***in camera*** to avoid harm to Linda Serbin and Bess Serbin, the ***only*** clients of the undersigned.

22.) That because of the erroneous "transfer" of this matter to the 17th Circuit and then the return of this cause to the 11th Circuit the undersigned would demand that

this cause proceed in the fashion required by the Florida Bar procedures, including but not limited to a response to the request for the undersigned for clarification and explanation to Ms. Evans at the very inception of this matter; and disclosure of the identity of the members of the 11I committee, which may be considering this cause.

WHEREFORE, upon the foregoing the undersigned would request that the Committee or the Court protect against the discovery sought; and/or quash the subpoena served on the undersigned; and cause this file to be closed; and\or that this Committee will further investigate the ***ultra vires*** act of Elena Evans in causing this matter to be removed from the jurisdiction of the Florida Bar "11I" committee and if said "11I" committee or the "17I" Committee is found to have considered this cause and declined to proceed that this Committee will cause this matter to be dismissed for lack of jurisidiction under the present cause, where the previous Florida Bar 11I Committee(s) declined to proceed as required by ***Mabie v. Garden Street Management Company***, 397 So. 2d 920 (Fla. 1981) and its progeny and/or that the present Committee would cause a clarified subpoena to be written and the foregoing matters addressed and clarified and thereupon the undersigned will appear and sign for said subpoena.

Appendix C

LAW OFFICES of
CALVIN DAVID FOX
P.O. Box 5286
Fort Lauderdale, Florida 33310
(305) 839-5035

/s/_____
CALVIN DAVID FOX, Esq.
Florida Bar No. 192098

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response; Motion for Clarification; Motion for a Protective Order; and Notice of Address was caused to be handdelivered on October 13, 1997 to LAWRENCE N. FRESHMAN, Chairman, Eleventh Judicial Circuit Grievance Committee "I" care of The Florida Bar, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131; and Carlos Ruga, Suite M-100, 444 Brickell Avenue, Miami, Florida 33131; and Jon Serbin, Apartment 7, 9241 Collins Avenue, Surfside, Florida 33154.

/s/_____
CALVIN DAVID FOX, Esq.

APPENDIX D — EXCERPTS FROM TRANSCRIPT OF HEARING HELD JANUARY 20, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

[1] IN THE SUPREME COURT OF FLORIDA
BEFORE A GRIEVANCE COMMITTEE

CASE NO. 97-70, 300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

Record of proceedings had and testimony taken before a Grievance Committee at the Offices of the Florida Bar, 444 Brickell Avenue, Miami, Florida 33131, on Tuesday, January 20, 1998, at a session commencing at 6:05 p.m., pursuant to notice.

* * *

[5] give in these proceedings will be the truth, the whole truth and nothing but the truth?

MS. SERBIN: I do.

MS. EVANS: Ms. Serbin, in this matter, did you hire Mr. Fox at any time?

MS. SERBIN: I can't say hire. I can say that he volunteered to help.

MS. EVANS: Is it your position that you have asked Mr. Fox for an accounting of any funds that he may have recovered on your behalf?

MS. SERBIN: I asked him to return the deposit that he was holding.

MS. EVANS: Has he returned any funds to you?

MS. SERBIN: Not to date.

MS. EVANS: Has he given you an accounting of those funds?

MS. SERBIN: No, he hasn't. He did give some of the money that he was holding in the beginning.

MS. EVANS: Do you know how much he is holding?

MS. SERBIN: I believe in the beginning, he gave $7,000 and maybe another $1,000 [6] after that.

MS. EVANS: Do you have any idea how much more you are due?

MS. SERBIN: He had $25,000 to begin with.

MS. EVANS: Does anybody else have any other questions of Ms. Serbin?

MR. FRESHMAN: Yes.

This is Mr. Freshman again.

The $25,000, was there ever an attorney fee involved in that $25,000? Was it your understanding that he was to receive a fee from that $25,000?

MS. SERBIN: No.

MR. FRESHMAN: What was your understanding of why he was holding the $25,000 for you, ma'am?

MS. SERBIN: At the time, he just thought it was best that he hold it in his account.

MR. FRESHMAN: How long ago was that?

MS. SERBIN: That was when we sold the house. I believe that was in 1992.

You have to ask Jon. I think it was in the spring of 1992.

[7] MR. FRESHMAN: When did you ask him for the money back?

MS. SERBIN: I have been asking him all along for the money back.

MR. FRESHMAN: Let's start with the spring of 1992. When would have been the first time that you asked him for your money back?

MS. SERBIN: That is how we got the $7,000 to begin with, because we needed money to move. At that time, he gave us the $7,000.

MR. FRESHMAN: When he gave you the $7,000 and did not give you the $25,000 that he was holding for you, what conversation did you have with him?

MS. SERBIN: He said that the money is safe with him and whenever I wanted it, I could get it.

MR. FRESHMAN: Was there some reason why he felt that you weren't old enough or wise enough to take the full $25,000?

MS. SERBIN: No.

MR. FRESHMAN: Did you ever give him the feeling that you wanted him to hold it in

* * * *

APPENDIX E — AFFIDAVIT OF LINDA SERBIN DATED JUNE 6, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF DADE

Before me, the undersigned authority, on this 6th day of June, 1998, personally appeared *Linda A. Serbin*, who being duly sworn, deposes and says the following:

1. I, Linda Adelman Serbin, join my husband in the complaint, *The Florida Bar File No. 97-70,300(11I),* against Calvin Fox.

2. My husband, Jon Serbin, brought a complaint against Calvin Fox and I am in total agreement with him on that matter.

3. Mr. Fox is holding an escrow account for me in the amount of $18,000.

4. Mr. Fox has been holding that money for a period of five years.

5. At this time, I have requested these funds and he is unwilling to release them.

6. I have never given Mr. Fox my consent or permission to keep these funds.

Appendix E

7. This money is the deposit of a real estate sale that did not materialize.

FURTHER AFFIANT SAYETH NAUGHT.

/s/_____
LINDA A. SERBIN, Affiant

SWORN TO AND SUBSCRIBED before me by *Linda A. Serbin* who is personally known to me or produced Florida Driver's License as identification on this 6th day of June, 1998.

/s/_____
NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

APPENDIX F — EXCERPTS FROM TRANSCRIPT OF HEARING HELD AUGUST 14, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

[1] IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

FLORIDA BAR CASE NO. 97-70,300 (11L)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

Proceedings had before Judge Paul Siegel, sitting as Referee, at 1351 Northwest 12th Street, Miami, Florida, on August 14, 1998, commencing at 2:05 o'clock p.m., pursuant to Notice.

* * *

[4] would admit noncompliance with production of the records, which is what this case has been sent to the Court for.

MR. WENZEL: Specifically, that being trust account records from May, 1993.

MR. FOX: The subject matter of the two subpoenas.

Appendix F

May records, May, '93 to date.

The reasons for that, Your Honor, are in the record, but I would agree to produce those records by August 28th.

When those documents that I have are produced, I guess the Court or the Bar would dismiss this case and you would recommend to the Supreme Court that the case has been resolved or they would file a dismissal or something like that?

MR. WENZEL: Well, we wouldn't agree to that, but what we would agree to is not to pursue the noncompliance of the subpoena or any type of discipline as a result of that like a suspension because you didn't comply with the subpoena originally.

MR. FOX: Right, but the Supreme Court needs to know what's happening with the case.

[5] MR. WENZEL: What we would like is that he have a date and we would like for you to determine if that date could be a little — we would request that date to be less than the 28th, perhaps by next Friday that he produce these records that are required in these two subpoenas and if he doesn't, that's he immediately suspended until he does produce those records.

THE REFEREE: Well, you folks either have an agreement or you don't.

MR. WENZEL: That's correct, and I —

Appendix F

THE REFEREE: It sounds like thus far, you don't have any agreement.

MR. FOX: The only agreement —

THE REFEREE: You're close, but you're not there yet.

MR. FOX: The only thing we didn't agree to, Judge, is a few minutes ago, Mr. Wenzel suggested this Friday and I suggested the 28th.

Now, the reason as far as the 28th goes, I have a mass in my abdomen which they are going to do a study of on Monday and decide whether to take it out and I think -- you [6] know, I need a little bit of time to recover from that.

I would like to produce the records because quite frankly, I didn't produce the records because I was not present at the hearing on the 20th because I thought Mrs. Serbin was not making a complaint against me and now she —

THE REFEREE: Well, let me make a suggestion then since I have listened to the two of you.

Let me suggest if it is acceptable to both sides that if on Monday, Mr. Fox, you are scheduled for surgery immediately, that the date for compliance with the subpoena will be August 28th, and if you find out that you are not going to be scheduled immediately for surgery, then the date for compliance will be the 21st.

Is that acceptable to you?

MR. WENZEL: That's acceptable.

MR. FOX: I think I could do that, Judge. If they say you know they are not going to do the surgery next week, that would be —

THE REFEREE: Yes, I can understand.

* * *

[12] THE REFEREE: Well, we're here right now.

Let me read Rule 5-1.2 on trust accounting records and procedures, which says:

"Note: Sub-section two. Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a Grievance Committee or a Referee shall first find that no good cause exists for failure to comply."

I think today is the day for any showing of good cause. So if you have any good cause for failure to comply with the subpoena, Mr. Fox, you need to tell me what it is right now.

If you don't, then my finding will be that there is not good cause for failure to comply with the subpoena, which I understand you're agreeing to comply with right now.

MR. FOX: I agreed to comply with it in front of — if you read the transcript of January 20th, 1998, I sent the committee a letter agreeing to comply after I received

a document which appeared to be a complaint by Mrs. Serbin.

I sent them a letter and then I went to my trial in Washington state and agreed to [13] comply.

THE REFEREE: Okay. Mr. Fox, do you have any good cause for failing to comply with the subpoena that you want to present to me right now?

I mean, not failing to comply in the past. Do you have any good cause for which you are not going to comply with the subpoena by the time agreed upon a few moments ago, either August 21st, 1998 or August 28th, 1998?

MR. FOX: I will produce the documents which I have relative to the subpoena, Judge.

THE REFEREE: Well, Mr. Fox, it sounds like a bit of a hedge —

MR. FOX: Judge, if there is a period at the end of a sentence that I'm missing somewhere, you know —

THE REFEREE: No. What you said was, "I will produce the records that I have."

MR. FOX: I will produce the financial records with regard to Serbin, and I'll produce the financial records with regard to those transactions since May of '93.

THE REFEREE: Well, whatever the subpoena calls for —

Appendix F

* * *

[15] have a clear record.

Mr. Fox, by August 21st or August 28th, depending upon whether or not he is scheduled next week for surgery, will produce all records which are called for by the subpoena.

If Mr. Fox does not comply with the subpoena — I have not heard any good cause today for a failure to comply — and I will file my report that may be drafted by Bar counsel, which is called for under the rule that I just quoted.

MS. SANKEL: Your Honor, when we submit a proposed report of Referee, may we include in there that you recommend that Mr. Fox remain suspended if he fails to produce those records until such time as he then complies? Because I believe that the Supreme Court will be looking to you for a recommendation along those lines.

THE REFEREE: Well —

MR. FOX: I think that's up to the Supreme Court.

MS. SANKEL: It's up to them whether or not to come with that recommendation —

THE REFEREE: Well, I don't find the

* * * *

APPENDIX G — FINDINGS AND RECOMMENDATIONS OF THE REFEREE DATED SEPTEMBER 4, 1998, IN THE SUPREME COURT OF FLORIDA, CASE NO. 92,484

IN THE SUPREME COURT OF FLORIDA
(Before A Referee)

Supreme Court Case No. 92,484

The Florida Bar File
No. 98-71,093(11I)

THE FLORIDA BAR,

Complainant,

v.

CALVIN DAVID FOX,

Respondent.

FINDINGS AND RECOMMENDATIONS

THIS CAUSE having come before this referee on The Florida Bar's Notice of Noncompliance with a Grievance Committee Subpoena and The Florida Bar's Status Report on Respondent's Non-Compliance and the referee having heard from the parties and being otherwise duly advised in the premises, this referee hereby makes the following findings and recommendations:

Appendix G

FINDINGS:

1. No good cause has been shown for respondent's non-compliance with production of all records set forth in that Grievance Committee subpoena dated September 22, 1997, a copy of which is attached hereto.

2. The respondent, Calvin D. Fox, had agreed to provide all records set forth in the Grievance Committee subpoena dated September 22, 1997 and was ordered in open court to produce the records set forth in the referenced subpoena. (See transcript of proceedings of August 14, 1998.)

3. The respondent had stated in open court that he would produce all records required under the subpoena to The Florida Bar no later than August 28, 1998.

4. This referee has been advised by counsel for The Florida Bar that respondent has failed to produce the subpoenaed records and further, that respondent has requested yet additional time for production.

RECOMMENDATION:

As respondent has failed to provide those records required pursuant to that grievance committee subpoena dated September 22, 1997, it is the recommendation of this referee that respondent be suspended until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997.

Appendix G

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 4th day of Sept., 1998.

/s/
Honorable Paul Siegel, Referee
Richard E. Gerstein Justice Bldg.
1351 N.W. 12th Street, Room 300
Miami, Florida 33125

copies furnished to:
Gregg D. Wenzel, Bar Counsel
Calvin D. Fox, Respondent

APPENDIX H — SUBPOENA TO COMMERCEBANK DATED DECEMBER 1, 1998 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

Witness Subpoena Duces Tecum

The Florida Bar File No.
97-70,300 (11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN D. FOX,

Respondent.

To: RECORDS CUSTODIAN
Commercebank
220 Alhambra Circle
Coral Gables, Florida

YOU ARE HEREBY COMMANDED to appear before Carlos Ruga, Staff Auditor of the Miami Office of The Florida Bar, duly appointed pursuant to the Rules Regulating The Florida Bar at 444 Brickell Avenue, Suite M-100, Miami, Florida 33131 on the 15th day of December 1998 at 10:00 am to testify in the above entitled proceeding, and to produce and bring with you at that time:

Appendix H

SEE ATTACHMENT

For failure to appear and testify as herein required, you will be deemed to be in contempt of the Supreme Court of Florida.

Dated this 1st day of December, 1998.

RETURN OF SERVICE

I CERTIFY that the foregoing
subpoena was served this 3
day of December 1998, by
/s/ Personal to Julio Garcia
(method of service) at 2199 Ponce

_____
Signature and Title of Person
Making Service

THE FLORIDA BAR

/s/_____
LAWRENCE N. FRESHMAN, Chair
Eleventh Judicial Grievance Committee "I"
9130 So. Dadeland Boulevard
Suite 1701
Miami, Florida 33156

Appendix H

ATTACHMENT TO SUBPOENA DUCES TECUM
CALVIN D. FOX
THE FLORIDA BAR FILE NO. 97-70,300(11I)

Bank statements, canceled checks, items deposited with its corresponding deposit slips, wire transfers, cashier's checks issued with supporting documentation, any debits or credits posted to any and all accounts in which Calvin D. Fox has signatory capacity, for the period of May of 1993 to the present.

Please provide first a copy of the bank statement for the month of June 1993, of each and every account that Calvin D. Fox had in the bank and we will advise you of what other records we will need after that.

In lieu of appearance you can mail the records to the attention of Carlos J. Ruga, Staff Auditor, The Florida Bar, 444 Brickell Avenue, Suite M-100, Miami, Florida 33131. If you have any questions please call Mr. Ruga at (305) 377-4445.

APPENDIX I — GRIEVANCE COMMITTEE'S REPORT OF NO PROBABLE CAUSE DATED MARCH 14, 2000 IN THE SUPREME COURT OF FLORIDA, FLORIDA BAR FILE NO. 97-70,300

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

File No. 97-70,3000(11I)

THE FLORIDA BAR,

Complaintant,

vs.

CALVIN D. FOX,

Respondent.

REPORT OF NO PROBABLE CAUSE

The [E]leventh Judicial Circuit Grievance Committee "I" found No Probable Cause in the above-referenced matter.

Pursuant to the provisions of Rule 3-7.4(j) of the Rules Regulating the Florida Bar, the undersigned by signature, signifies a finding of No Probable Cause by the Grievance Committee as to the referenced complaint.

Dated this 14th day of March 2000.

Appendix I

THOMAS M KARR, Chair
Eleventh Judicial Circuit
Grievance Committee "I"

cc. Arlene Kalish Sankel
Branch Staff Counsel
Calvin D. Fox, Respondent,
Jon & Linda Serbin, Complaintants.

APPENDIX J — LETTER FROM JOHN ANTHONY BOGGS TO CALVIN DAVID FOX, DATED JANUARY 29, 2002, CONTAINED IN EXHIBIT N TO PETITIONER'S APPENDIX TO PETITION TO VACATE TEMPORARY SUSPENSION IN FLORIDA SUPREME COURT CASE SC08-1328

IN THE SUPREME COURT OF FLORIDA

Case N0. SC08-1328
Formerly Case No. 92,484

CALVIN DAVID FOX,

Petitioner/Respondent,

THE FLORIDA BAR,

Respondent/Complaintant.

PETITIONER'S APPENDIX TO PETITION TO VACATE TEMPORARY SUSPENSION

CALVIN DAVID FOX
Florida Bar No. 192098
Post Office Box 7900
Jupiter, Florida 33468
(954) 383-5943

Appendix J

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Document	Exhibit
Notice of Hearing upon Jon Serbin Complaint; November 24, 1999 Order of Supreme Court and February 22, 2000 Order denying Rehearing etc.	A
Report of No Probably Cause of 11th Circuit Grievance Committee and letter to Serbin	B
Calvin David Fox, Vitae	F
Petitioner's Verified Motion to Disqualify Referee Siegel Fla. S.Ct. Case 92,484, August 12, 1998	G
Linda Serbin Contract and Closing Statement November 23, 1992 and August 4, 1993	H
Petitioner's Letter to Gregg Wenzel, copy to Boggs, July 20, 1998.	I
Petitioner's Letter to Florida Bar President-Elect, Todd Aronovitz, January 16, 2001	J
Petitioner's Letter to John A. Boggs Director Florida Bar Legal Division, December 4, 2001	K
Petitioner's Letter to President of Florida Bar, Todd Aronovitz, June 5, 2003	L

Appendix J

Petitioner's Letter to Chairman of Special Commission On Lawyer Regulation, April 15, 2004 ..... M

John A. Boggs Letter of January 29,2002; and John A. Boggs's Letter of April 28, 2994 Reply to Petitioner's April 15, 2004 Letter to Commission on Lawyer Regulation ..... N

John A. Boggs Letter of January 29, 2002; John A. Boggs's Letter of April 28, 2994..... N

The Sun-Sentinel, "Convictions and Conscience Remain On Trial: Fox Says Stewart May Not be the Murder" July 26, 1990, p. 1e and 7e ..... O

Fox, C., "Review of Death Penalty Literature: Why it Should be Abolished----The Execution of Roy Allen Stewart" EDD 9200 "Trends and Issues" (Spring 2008) ..... P

"Affidavit of Randy Mumper and Index, Fox v. Chiles, Fla S.Ct. Case 78,906; Fox For Judge Flyers, November 4, 1988; Gelber resignation, July 31, 1991; "Judge bragged he could fix cases," The Miami Herald November 13, 1991 p. 1a ..... Q

Appendix J

EXHIBIT N

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

THE FLORIDA BAR
650 Apalachee Parkway
Tallahassee, FL 32399-2300

January 29, 2002

850/561-5600
www.FLABAR.ORG

Mr. Calvin David Fox
Post Office Box 5286
Fort Lauderdale, Florida 33310-5286

Re: Continuing Suspension for Noncompliance With Grievance Committee Subpoena

Dear Mr. Fox: Please pardon the delay in responding to your inquiry. I have reviewed the files, including your Petition for Writ of Certiorari to the United States Supreme Court as they relate to your suspension and the subsequent dismissal of the Serbin complaint by the grievance committee. I have also conferred with bar counsel regarding their impressions and recollections.

It is true that the initial spark behind the matters relating to the suspension was the complaint of Jon Serbin

(later joined in by his ex-wife, your client). However, the issues presented in that complaint are not the only issues for which the grievance committee issued its subpoena. Examples of other issues that we have been unable to resolve due to lack of records are checks cashed out of the trust account without adequate reference to determine if appropriate; instances of funds coming into the trust account without any subsequent disbursement to the client and verification of whether they were entitled to any disbursements; some checks deposited to the trust account made payable to you and clients, but not endorsed by clients; and no trust records for any account after April 1995.

We are reviewing what we know of your trust accounting compliance and will advise you further regarding what we believe you need to accomplish before we may consider the issue of your continuing suspension. I cannot commit to a particular resolution at this time. Please keep in mind that it was, and is, your obligation to keep and produce trust records when required to do so. In this respect you hold the "keys" to resolution of your dilemma.

On another topic, I noticed the only address you have on file with the bar is the post office box referenced in this letter. Please review rule 1-3.3, R. Regulating Fla. Bar, as it relates to the requirement of designating a physical street address.

Thank you.

Sincerely,

/s/
John Anthony Boggs
Director, Legal Division

cc: Arlene K. Sankel
Barry W. Rigby
John F. Harkness, Jr.

APPENDIX K — ORDER OF THE SUPREME COURT OF THE UNITED STATES IN CASE NO. 99-1887

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 29543

October 2, 2000

Mr. Gregg D. Wenzel
Suite M-100
444 Brickell Avenue
Miami, FL 33126

Re: Calvin David Fox
v. Florida Bar
No. 99-1887

Dear Mr. Wenzel:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/
William K. Suter, Clerk

APPENDIX L — THE FLORIDA BAR'S RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO VACATE HIS SUSPENSION FOR NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA IN FLORIDA SUPREME COURT CASE NO. SC08-1328

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case
No. SC08-1328

The Florida Bar File
No. 2009-50,075(11I)

THE FLORIDA BAR,

Complainant,

vs.

CALVIN DAVID FOX,

Respondent.

THE FLORIDA BAR'S RESPONSE IN OPPOSITION TO RESPONDENT'S PETITION TO VACATE HIS SUSPENSION FOR NONCOMPLIANCE WITH A GRIEVANCE COMMITTEE SUBPOENA

COMES NOW The Florida Bar, by and through its undersigned attorney, and files this Response in Opposition to Respondent's Petition to Vacate His Suspension For

Appendix L

Noncompliance With a Grievance Committee Subpoena, and states as follows:

1. On November 24, 1999, respondent was suspended by this Honorable Court as a result of his failure to comply with a grievance committee subpoena dated September 22, 1997. This Court's order specifies that respondent's suspension shall continue until such time as notice of respondent's compliance is made by The Florida Bar. (A copy of the Order dated November 24, 1999 is attached as Exhibit "A".) Respondent has never complied with that subpoena.

2. Moreover, this Court's Order was entered following the rendering of Findings and Recommendations by the Honorable Paul Siegel, Referee, and an appeal by respondent from those Findings and Recommendations. (A copy of Judge Siegel's Findings and Recommendations are attached as Exhibit "B".)

3. Respondent has been in noncompliance with a properly issued grievance committee subpoena since September, 1999. He has failed to make a showing of good cause excusing his noncompliance to the then grievance committee chair, to the referee, or to this Honorable Court. The mere passage of time is no defense.

Wherefore, The Florida Bar respectfully requests the entry of an Order denying respondent's petition.[1]

---

1. Most recently, respondent has filed a Verified Motion to Strike Notice of Appearance and Disqualify Arlene Sankel, bar counsel in this cause. The Florida Bar will respond to said motion if directed to do so by this Honorable Court.

Appendix L

/s/_____
ARLENE KALISH SANKEL
Bar Counsel
Florida Bar No. 272981
The Florida Bar
444 Brickell Avenue
Suite M-100
Miami, Florida 33131
(305) 377-4445

Appendix L

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing The Florida Bar's Response in Opposition to Respondent's Petition to Vacate his Suspension for Noncompliance with a Grievance Committee Subpoena was mailed to the Honorable **Thomas D.** Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399, and a true and correct copy was mailed to **Calvin David** Fox, Respondent, Post Office Box 7900,

Jupiter, Florida 33468, and to **Kenneth L. Marvin**, Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, on this 27th day of August, 2008.

/s/_____
ARLENE KALISH SANKEL
Bar Counsel

APPENDIX M— ORDERS OF THE SUPREME COURT OF FLORIDA IN CASE NO. SC08-1328

THE SUPREME COURT OF FLORIDA

Case No.: SC08-1328
Lower Tribunal No(s).: 2009-50,075(11I)

THURSDAY, MAY 27, 2010

THE FLORIDA BAR

Petitioner(s)

vs.

CALVIN DAVID FOX

Respondent(s)

Respondent's "Verified Petition to Vacate Ongoing Daily, Temporary Suspension for Lawfully Refusing to Comply with Subpoena, Nunc Pro Tunc" is hereby dismissed.

All other pending motions and requests for relief are hereby denied.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

Appendix M

/s/_____
Thomas D. Hall
Clerk, Supreme Court

bhp

Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX

Appendix M

SUPREME COURT OF FLORIDA

CASE NO.: SC08-1328
Florida Bar File No.: 2009-50,075(11I)

THURSDAY, AUGUST 19, 2010

THE FLORIDA BAR

Petitioner(s)

vs.

CALVIN DAVID FOX

Respondent(s)

Respondent's Motion for Rehearing is hereby denied. *See* Fla. R. App. P. 9.330.

The "Lower Tribunal No." in the style of the order dated May 27, 2010, refers to The Florida Bar File Number assigned to this proceeding.

CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur.

A True Copy
Test:

Appendix M

/s/_____
Thomas D. Hall
Clerk, Supreme Court

bhp

Served:

KENNETH LAWRENCE MARVIN
ARLENE KALISH SANKEL
CALVIN DAVID FOX

FEB 24 2011

NO. 10-677

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN DAVID FOX,

Petitioner,

vs.

THE STATE OF FLORIDA BAR ASSOCIATION,

Respondent.

ON PETITION FOR CERTIORARI TO THE FLORIDA SUPREME COURT

REPLY TO BRIEF IN OPPOSITION

CALVIN DAVID FOX
160 Barbados Drive
Jupiter, Florida 33458
(954) 383-5943

STATEMENT OF ISSUES

This is a petition from the Florida Supreme Court, which dismissed the Petitioner's Petition to Vacate the ongoing ten (10) year *temporary* suspension of his law license under the "no defense" Rule 5-1.2(f)(1)(1992) upon a claim of his failure to comply with a Grievance Committee subpoena, for which all available documents were produced on *February 29, 2000* and the Petitioner claims compliance. The issues are:

1.) Whether the "no defense" provision of Florida Bar Trust Accounting Rule 5-1,2(f)(2) (1992) applied herein and reenacted on 02/01/2010, which continues to deprive *all* attorneys and the Petitioner of *all rights* in any disciplinary proceeding, is unconstitutional per se and as applied?

2.) Whether, the Petitioner, despite his status as an Attorney, is entitled to due process, equal protection and protection from prosecutorial misconduct even where the prosecutors are employees of the Florida Supreme Court?

3.) Whether Florida's Attorney Discipline Rule 2-3.1 and as reenacted on 10/01/2010, employing Florida Bar prosecutors as agents of the Florida Supreme Court, allowing the combination of the functions of prosecution, judge and jury, violates due process?

4.) Whether the ongoing ten (10) year *temporary* suspension of the Petitioner's law license without a hearing on compliance as required on the face of the order of temporary suspension, for failure to comply

with a Grievance Committee subpoena, in the face of a claim of compliance, is so arbitrary and capricious as to shock the conscience of the Court, where the Petitioner has claimed compliance based upon the undisputed fact that all available documents were produced on *February 29, 2000*, at a hearing before the same Grievance Committee, which had issued the subpoena, and which promptly found that the Petitioner had done nothing wrong and closed its file?

5.) Whether Rule 5-1.2(f)(1) lawfully allows the prosecution employed as agents of the Florida Supreme Court, may circumvent Attorney-Client Confidentiality, due process, equal protection and prosecutorial misconduct claims, and use a subpoena to force the Petitioner to chose between defending his clients' privilege and defending himself by divulging client records, which exonerate him, but expose his clients to public ridicule and civil and criminal prosecution?

6.) Whether Rule 5.1.2(f)(1) and the Florida system for attorney discipline lawfully permits prosecutors employed as agents of the Florida Court to have *ex parte* communications with and to provide *ex parte* information to, triers of fact and the Florida court?

7.) Whether the prosecution as employees of the Florida Supreme Court may secretly harass clients make a claim against against their attorney, where the clients repeatedly refuse to make any claim?

8.) Whether the prosecution as agents employed by the Florida Supreme Court may continue to shop for a Grievance Committee complaint, after the denial of enforcement of its subpoena?

9.) Whether the prosecution as agents employed by the Florida Supreme Court secretly provide papers with impunity to a Referee and to use a Referee, who has a previously known, open and obvious conflict of interest with the attorney, who is being prosecuted?

10.) Whether the prosecution as employees of the Florida Supreme Court may secretly conduct an ex parte hearing for compliance with a subpoena upon which these proceedings are based, which was not noticed for hearing and the hearing proceeded off the record, notwithstanding, Florida's Conflict Rules codified as 2.052 l.R.Jud.Admin., where it was undisputed that on January 20, 1998, the Petitioner in Seattle at an employer's arbitration trial?

11.) Whether it is a denial of due process and equal protection for the Florida Supreme Court enter orders prepared for it by prosecutors employed as agents of the Florida Supreme Court, denying attorneys all rights afforded all citizens in Florida Appellate Rules 9.300(b) and 9,340(b) to stay and rehearing?

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ARGUMENT

1.) The Extension of time for the Respondent's Brief and the Respondent's Brief were not served in compliance with the Rules of Court and should be stricken.

The Respondent's brief was due to be filed by order of the Court on *February 7, 2011.* On the late afternoon of *February 2, 2011* the Petitioner received a letter to the Clerk from the Respondent by mail. To gain a tactical advantage and avoid any opposition, the Respondent provided its letter to the Clerk by facsimile and Fedex on *January 31, 2011.* On *February 3, 2011* the Petitioner filed his *Response in Opposition* by facsimile to the Clerk and to the Respondent. Appendix to Reply Brief at App.

As reflected in the Petitioner's opposition, the Respondent's reasons for needing more time were vague and unspecified and essentially claimed that counsel's other work was more important than this Court's work. Appendix to Reply Br. App.1-3. The Petitioner's opposition was a useless act, because on *February 1, 2011,* the Clerk granted the Respondent additional time to *February 17, 2011* to file its brief.

With the extension of time obtained from the Clerk, the Respondent's brief was due to be filed on *February 17, 2011.* Instead, of February 17th or 18th, on the evening of Saturday, *February 19, 2011,* the Petitioner received the Respondent's Brief by ordinary mail. However, in order to gain a tactical advantage, the Respondent provided its brief to this Court by U.S. Express Mail on February 17, 2011.

Rule 29.3 of the Court Rules provides specifically that, "*Ordinarily, service on a party must be by a manner at least as expeditious as the manner used to file the document with the Court.*" In the case at bar, there were no extraordinary circumstances alleged for the extension of time, nor any reasons to refuse to comply with Rule 29.3, except for the deliberate disregard of Rule 29.3 in order to gain a tactical advantage and avoid any opposition to its extension of time and to put the Petitioner at a disadvantage in promptly preparing and filing his Reply Brief.

Most respectfully, the irony here is not lost upon the Court in this proceeding testing the integrity of attorney disciplinary proceedings, of the Respondent's calculated repeated disregard of Rule 29.3 to gain a tactical advantage; and attempt as discussed at "2", to mislead the Court by its deletion of the transcript evidence that Linda Serbin's was *not* at the January 20, 1998 hearing and failure to mention the undisputed record evidence that her signature was forged on the document used by the Grievance Committee on January 20, 1998.

The only remedy for the Respondent's failure to properly serve its letter to the Clerk and Brief in Opposition under Rule 29.3, is to strike the Brief in Opposition. Certainly the large firm the Respondent has hired was familiar with Court Rules.

2. Linda Serbin Was Not Present at the Hearing on January 20, 1998 and the Record is undisputed that Her Signature was forged on the Document relied upon by the Grievance Committee to proceed.

By an act of omission, the Respondent has attempted to mislead this Court into believing that Linda Serbin was present and legitimately testified at the proceeding on January 20, 1998. However, Linda Serbin was not lawfully sworn as a witness, because Linda Serbin was *not* present at the hearing on January 20, 1998. The portion omitted by the Respondent clearly demonstrates this:

> "ELENA EVANS: . . .[Mr. Fox's] continuance has been denied by the chair. We are going to start by taking Ms. Serbin's testimony by phone.
> MR. FRESHMAN: I will swear her in."
> Appendix to Reply Brief at App. 6-7.

In Florida, a witness on the phone, who is not put under oath by an authority who can identify and confirm that she is that person, is not competent testimony. Indeed, Linda denied that she wanted to make any complaint against the Petitioner and denied that her signature was on the document used by the Committee on January 20, 1998.. See, Verified Petition at A24. The Petitioner complained that her signature was forged in his Verified Responses, and to the deaf ears of the Referee:

> "MR. FOX: Mr. Fox did not request this hearing, Your Honor.
>
> Justice Kogan remanded it to you, based upon their notice of non-compliance and my verified response, which they have never responded to.
>
> Another correction is that Linda Serbin is not the complaining witness. It is Jon Serbin.

> They gave me the materials a few days before the hearing scheduled by the Committee, at which the Committee said I could comply. *They gave me a document. I looked through the documents and I found one-page typed document with a signature purporting to be that of Linda Serbin.*
> *As I explained in my verified response, it is not her signature.* The only complaining witness here is Jon Serbin.
> Jon Serbin was not my client when the funds for the house were received.
>
> Appendix to Reply Brief at App 8-9.

In fact, the Petitioner repeated to the prosecutors and Referee to no avail, the record established that Linda Serbin herself denied being at the January 20, 1998 hearing and she had examined the document used by the Committee on January 20, 1998 and confirmed that the signature *was not hers*:

> "THE REFEREE: Let me stop you, Mr. Fox.
>
> I think any of the proceedings before the Grievance Committee are almost moot at this point.
>
> I don't rely, really, and probably will not rely in anything I do on what the Grievance Committee did.
>
> * * *
>
> It seems under the rules as written by the Supreme Court that lawyers do not have a whole lot of rights in this area. They are

> required to comply with certain specific regulations in connection with their trust accounts and the Bar is given the right to subpoena a lawyer's trust account records. As I say, I don't think they need probable cause for a complaint, but that is something that you can address.
> MR. FOX: *Mrs. Serbin confirmed it was not her signature, by the way.*
> THE REFEREE: Again, the Bar received information that you received a trust account deposit of some $25,000.
> Mr. Serbin says that his wife didn't get the money.
> As I say, I don't know that it matters whether he was your client . .
> MR. FOX: *It matters greatly, Your Honor.*"
>
> Appendix to Reply at App. 9-11.

With this *undisputed* evidence on the record, the Florida Bar prosecutors had to continue to secretly harass Linda Serbin, a represented client, to force her to make a legitimate complaint against the Petitioner, which she refused to do. After nineteen (19) months of secret harassment, Linda finally caved in and signed a simple complaint on June 5, 1998 (which was not disclosed to the Petitioner until the Petitioner demanded to see the statement at the June 10, 1998 hearing), the day after the Petitioner had obtained a settlement of $27,000 upon a final summary judgment and more than half way through the present cause, which the record shows is based on the complaint of Jon Serbin. Petition, at A18-A21; App. 13-14, para. 18-20.

3.) Respondent's claim of No Conflict Among States is Frivolous.

The Respondent claims that because the Petitioner has cited no disciplinary rules for other states, that there must be no conflict. Such a position should be rejected out of hand. The Petitioner has sought *written responses* from forty-nine (49) states and the District of Columbia. As of the printing of this Reply Brief, nine (9) states, California, Wyoming, Tennessee, Missouri, Arizona, Nevada, North Carolina, Kansas and Louisiana have responded *in writing* that they do not have a "no defense" rule denying all attorneys of all rights in Trust Accounting disciplinary proceedings like Florida. West Virginia provided access to its rules at http://www.wvbar.org/iolta/contant to the Petitioner and there is no "no defense" Rule for lawyers in West Virginia's rules either. Only three (3) states, North Dakota, [Rule 1.15, N.D. Rules of Profesional Conduct], South Carolina [Rule 471(a)(1), a "no defense" rule depending information received]; and Montana [Rule 1.18(c) Rules of Professional Conduct], have a version of Florida's "no defense" rule for attorneys.

The Respondent's barren contention that there is no conflict, because the Petitioner has not cited any other state's rules is therefore frivolous. There is no other remedy for the conflict among the states and the capricious denial of fundamental federal rights, except review by this Court and this is an important issue this Court should decide, which recurs and yet evades review.

4. The Respondent has misstated the record and attempted to trivialize the Unauthorized Targeting of the Petitioner in the Verified Florida Petition.

The Respondent contends that the record is filed in this Court in Cases 99-1887 and 05-651. The Respondent claims that the record contains no allegations of prosecutorial misconduct and attempts to trivialize these proceedings by arguing the Petitioner's recitation in his Verified Petition of the unauthorized "Targeting" of the Petitioner by the rogue Florida Bar prosecutors herein. See, A32-A41.

To the contrary, this cause is a "res ipsa loquitor" primer of prosecutorial misconduct caused because the Petitioner has no rights as an attorney. Moreover, the prosecutors did not bother to ever respond nor challenge anything stated in more than seven (7) sworn documents submitted by the Petitioner. The record is replete with direct and indirect evidence of prosecutorial misconduct and everything in the Petition for Certiorari and Florida Supreme Court Verified Petition is on the record.

Trying to bolster its barren allegation, the Respondent omits the testimony of the Florida Bar's auditor at the hearing on February 29, 2000. The Florida Bar's auditor did *not* raise any other issues as now suggested by the Respondent. In fact the auditor testified on the record that he could find *nothing* wrong in the Petitioner's Trust Banking records. Even the January 29, 2002 letter from Boggs equivocates and finally says, 'we'll get back to you,' because all documents available had been produced on February 29, 2000. Resp. Appendix J.

The Notice of Hearing for February 29, 2000 issued by the Florida Bar Counsel, Wenzel, was *identical* to the January 20, 1998 Notice of hearing and included all matters relating to the 1997 subpoena. Therefore, when all documents the Petitioner had were produced, the Grievance Committee issued its finding of that the Petitioner had done nothing wrong. There has been no affirmative communication from the Respondent that the Petitioner that anything else needs to be produced, since February 29, 2000 upon the same Notice of Hearing as in January 20, 1998, and all available documents were produced; the Grievance Committee reviewed all documents, the Florida Bar auditor reviewed all bank records and testified, the Petitioner, Linda Serbin and Jon Serbin testified, and the Grievance Committee found that the Petitioner had done nothing wrong and closed its file. A70-A71; A76; A77; A79; A80. The prosecutors did not appeal any of those findings.

The Respondent has been aware the Grievance Committee discharge of the Serbin complaint since February 29, 2000. Yet the rogue prosecutors have been allowed without supervision, nor meaningful review, to arbitrarily continue to hold the Petitioner's license hostage, without due process, because the roles of prosecutor, fact finder and judge are combined in Florida in flagrant violation of due process and equal protection, wherein the Petitioner's license has been "temporarily" suspended for more than ten (10) years despite exoneration.

In his *second* response herein on November 3, 1996, the Petitioner specifically complained that the

prosecutor was seeking information, which the Petitioner could not lawfully produce without violating his oath to his clients to maintain their confidences. App. 13-15; see also e.g. Motions for a Protective Order 17th Cir & 11th Cir. (Pet. at A11).

When the 17th Circuit Committee got the Motion for a Protective Order, the record shows that the 17th Circuit Committee closed its file. A11. However, the record shows Evans and Sankel just ignored the same Motion for a Protective Order proceeded on January 20, 1998 without the Petitioner, who had filed a Motion and letter that he was in a federal trial in Seattle on January 20, 1998 and wished to attend. A12-A13. Since the Petitioner has no rights under Florida's Rule, Florida prosecutors; the Referee; Florida Court and Grievance Committee ignored any complaints of misconduct, denial of due process and abuses recited in testimony, and more than seven (7) verified complaints by the Petitioner on the record from 1996, up to and including 2010 which are recited in the Verified Florida Petition.

The Respondent also claims that the Petitioner's discussion of unlawful Targeting in the *Verified* Florida Petition at pages 32-41, is evidence that there was no record of prosecutorial misconduct. The motives suggested in the discussion at 32-41 are an explanation for why there is a the record of misconduct, denial of due process, harassment of a represented client, and denial of the attorney client privilege. Moreover, the record is replete with the Petitioner's sworn complaints, which have never been denied; the transcripts of hearing and the record of this case since October of 1996. A4-61.

Unauthorized *targeting* of the Petitioner was also a great concern of Mr. Boggs and President of the Florida Bar Todd Aronovitz when Mr. Aronovitz went to Tallahassee from his office in Miami and met with Boggs. Mr. Boggs specifically assured Mr. Aronovitz, on the record that the Petitioner was not an *authorized* target of the Florida Bar. A15-A16.

The Respondent does actually not deny any of Petitioner's complaints that would be plain error by prosecutors in any other case, except for Florida's attorney discipline system, and its "no defense" Rule 5-1.2(f)(1), *e.g., compare, Florida Bar v. Feinberg*, 760 So.2d 933 (Fla. 2000) *(unlawful contact by prosecutor with a represented client); Rose v. State*, 601 So.2d 1181, at 1182 (Fla. 1992) *(unlawful ex parte contact with the trier of fact);* and *Florida Bar v. Cox*, 794 So.2d 1278, 1282 (Fla. 2001) (abuse of the *duty of a prosecutor to protect constitutional rights and to seek justice, not convictions*), where the prosecutors' misconduct would be quickly seized upon and reversed in any other case. *Id.*

CONCLUSION

WHEREFORE, upon the foregoing and such terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that this important Petition for Certiorari be granted and reviewed on the merits.

CALVIN DAVID FOX
160 Barbados Drive
Jupiter, Florida 33458
(954) 383-5943

APPENDIX TO REPLY BRIEF ON JURISDICTION

IN THE SUPREME COURT OF THE UNITED STATES
CASE NO. 10-677

CALVIN DAVID FOX,
Petitioner,

vs. RESPONSE IN OPPOSITION TO ADDITIONAL TIME

THE STATE OF FLORIDA BAR ASSOCIATION,

Respondent.
_____/

COMES NOW, the Petitioner, CALVIN DAVID FOX, and submits this Response in Opposition to the Respondent's letter request for additional time:

1.) On February 2, 2011 the Petitioner received a letter by mail dated, January 31, 2011, requesting an additional ten (10) days to provide the Court with a Response to the Petition for Certiorari. The Respondent's letter was sent by Fedex and facsimile to the Court.

2.) The Respondent's Response was supposed to be filed by February 7, 2011. The reason advanced for the extension is because of:

"certain scheduling conflicts and the press of other business commitments . . ."

3.) The facts herein are not in dispute. The Petition for Certiorari presents the basis for the Court's jurisdiction, the importance of this case, and the need to exercise jurisdiction.

4.) The Respondent has no real basis to

contest jurisdiction and its request for additional time, made within ten (10) days of the Court ordered due date of February 7, 2011, is untimely.

5.) Furthermore, Justice Frankfurter writing as a Circuit Justice in *Carter v. United States*, 75 S.Ct. 911 (1955) explained that, except for the circumstance of an ongoing trial, the press of a lawyer's business should *not* take precedent over this Court's work:

> " [G]enerally speaking, barring such exceptional situations, the responsibility of counsel to litigation in this Court should take precedence, on the assumption that the issue sought to be raised here is of such significance as to call for review by this Court."

6.) The Respondent's law firm has more than one thousand eight hundred (1,800) lawyers in the twenty-seven (27) U.S. offices listed upon its letterhead provided to the Court. A general statement about "scheduling conflicts" and the "press" of other business is insufficient to avoid a timely response in this Court.

7.) The Respondent's request for additional time should therefore be denied under this Court's precedent and Rules of Practice

WHEREFORE, upon the foregoing, the Petitioner, CALVIN DAVID FOX, prays that this Court will deny the request for additional time and grant the Petition for Certiorari.

CALVIN DAVID FOX
Florida Bar No. 192098
160 Barbados Drive
Jupiter, Florida 33458

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response in Opposition to Additional Time was caused to be served by First Class Mail and facsimile at (850) 222-6891, upon M. Hope Keating, 101 East College Avenue, Tallahassee, Florida 32302 and to the Clerk of the Court by first class mail and facsimile at (202) 479-3268, on this 3rd day of February 2011.

CALVIN DAVID FOX

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 492108
Fort Lauderdale, Florida 33349

(305) 839-5035

November 3, 1996

Elena Evans
Assistant Staff Counsel
Suite M-100
444 Brickell Avenue
Miami, Florida 33131

RE: Complaint by Jon Serbin
Fla. Bar File No. 97,70,300 (I)

Dear Ms. Evans:

I received your October 25, 1996 letter on Sunday, November 3, 1996, because your office insists on sending correspondence to the wrong address. **Exhibit A**. Please note the corre4ct address for your mailings.

On less than one (1) days notice you require financial records. Please be advised that I need time to confer with my client, Linda Serbin, prior to any response in this matter because the disclosures required would violate the privacy of both her and her daughter, Bess Serbin. Demand is hereby made for an additional ten (10) days for a response.

Please be advised that Jon Serbin does not have any claim to the funds he refers to. I was retained by Linda Serbin only to save her house; and by express agreement of Linda Serbin and Jon Serbin have represented only Linda Serbin at all times, because of a gross conflict of interest with representing Jon Serbin. I would not have undertaken Ms. Serbin's tragic situation without that agreement.

Your kind attention to this matter is appreciated. If you have any questions or need additional information, please contact me forthwith.

Very truly yours,

CALVIN DAVID FOX

[BEFORE A GRIEVANCE COMMITTEE]

CASE NO. 97,70,300(11I)

THE FLORIDA BAR,
Complainant,

vs.

CALVIN DAVID FOX,
Respondent.
_____/

Record of proceedings had and testimony taken before a Grievance Committee at the Offices of the Florida Bar, 444 Brickell Avenue, Miami, Florida 33131, on Tuesday, January 20, 1998, at a session commencing at 6:05 p.m., pursuant to notice. [EXCERPT]

Witness	Direct	Cross
Ms. Linda Serbin (Telephonically)	5	

* * *

MS. EVANS: We have Ms. Serbin on the telephone.

Ms. Serbin, please stand by.

My name is Elena Evans. I am Bar Counsel for Grievance Committee 11I.

I do not vote with the Committee.

We are meeting tonight on the cause of the

Florida Bar versus Calvin David Fox, Florida Bar File Number 97-70,300(11I).

Present also is:

MR. FRESHMAN: Lawrence Freshman, as the Chair.

MS. EVANS: And an attorney.

MR. CARR: Thomas Carr, an attorney and Vice-Chair.

MS. MOBLEY: Allie Mobley, lay person for the Committee.

MS. EVANS: For the record, the Complainant, Jon Serbin, is also present.

This is set for Mr. Fox's non-compliance with a duly executed Grievance Committee subpoena that was issued by the Chair of this Committee, requesting that Mr. Fox provide his trust account records.

Until this date, none have been provided.

Mr. Fox did try to obtain a continuance of this matter, sending The Florida Bar a letter dated January 17, 1998, claiming that he would produce the records at a later date.

However, his continuance has been denied by the Chair.

We are going to start by taking Ms. Serbin's testimony by phone.

MR. FRESHMAN: I will swear her in.

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE
CASE NO. 92,484

THE FLORIDA BAR,
Complainant,
vs.
CALVIN D. FOX,
Respondent.
_____/

Record of proceedings had and testimony taken before Referee Paul Siegel at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130, on Wednesday, June 10, 1998, at a session commencing at 2:40 p.m., pursuant to notice.
[EXCERPT]

[GREGG WENZEL] That's why we are here, because Mr. Fox requested a hearing in front of Your Honor as to why he doesn't have to give these particular records, the bank records.

That's where we stand.

THE REFEREE: Yes, sir?

MR. FOX: Mr. Fox did not request this hearing, Your Honor.

Justice Kogan remanded it to you, based upon their notice of non-compliance and my verified response, which they have never responded to.

Another correction is that Linda Serbin is not the complaining witness. It is Jon Serbin.

They gave me the materials a few days before the hearing scheduled by the Committee, at which the Committee said I could comply.

They gave me a document. I looked through the documents and I found one page typed document with a signature purporting to be that of Linda Serbin.

As I explained in my verified response, it is not her signature. The only complaining witness here is Jon Serbin.

Jon Serbin was not my client when the funds for the house were received. That is abundantly clear as reflected in my verified response and exhibits.

I think what happened here was that Mr. Freshman, who I also . .I believe he is the guy . .I have asked my former partner to verify it, that Mr. Freshman is who I sued in another case. .has misled the Bar and the Committee.

He did not make any effort whatsoever to obtain additional information.

I spent a lot of money on my voice mail system.

He sent me a letter which I attached to my response, in which he says, I chose not to respond to your voice mail system.

THE REFEREE: Let me stop you, Mr. Fox.

I think any of the proceedings before the Grievance Committee are almost moot at this point.

I don't rely, really, and probably will not rely in anything I do on what the Grievance Committee did.

I think what we have is a subpoena dated September 22, 1997 for you to appear with certain trust accounts records before an auditor of the Bar.

I fully understand your position that the Complainant before the Bar is Jon Serbin, rather than Linda Serbin. I understand your position that Jon Serbin has no right to the money and further, that he was not your client.

I have read all of that.

Even assuming that all of that is true, I don't know that it makes any difference at all, because I think if the Bar has any reason at all from anybody's complaint to suspect that a lawyer may not be in compliance with the trust accounting regulations of the Code of Professional Responsibility, I don't see any reason why the Bar cannot subpoena a lawyer's trust account records.

I don't think the Bar has to have probable cause, clear and convincing evidence. I don't think they need very much at all to go on in order to issue a subpoena.

It seems under the rules as written by the Supreme Court that lawyers do not have a whole lot of rights in this area. They are required to comply with certain specific regulations in connection with their trust accounts and the Bar is given the right to subpoena a lawyer's trust account records.

As I say, I don't think they need probable cause for a complaint, but that is something that you can address.

MR. FOX: Mrs. Serbin confirmed it was not her signature, by the way.

THE REFEREE: Again, the Bar received information that you received a trust account deposit of some $25,000.

Mr. Serbin says that his wife didn't get the money.

As I say, I don't know that it matters whether he was your client . .

MR. FOX: it matters greatly, Your Honor.

THE REFEREE: Tell me why.

MR. FOX: if you read my responses, every time they sent me a subpoena. I responded by saying,Please, I need additional time.

Also, I started to them that Jon Serbin was not my client at that time and that in order to respond to this matter, Linda Serbin must waive attorney-client privilege matters.

She has not. She refuses to. She told the investigator she would not waive it. She told their investigator that in fact she does not wish to make a complaint. Everything is fine with her.

I think that I cannot be blackmailed by Mr. Jon Serbin into disclosing Linda Serbin's client-attorney matters in order to defend this case.

I am put on the horns of a dilemma by the Bar. In order to defend this case, I must disclose attorney-client information matters.

The client has declined to allow me to do that, repeatedly.

I am on the horns of a dilemma, Your Honor.

I think the issue here is . .and I think this is why Justice Kogan remanded it.

The issues drawn by the documents filed before the Court . .and that is that they said I didn't comply by showing up at the committee hearing.

IN THE SUPREME COURT OF FLORIDA
[BEFORE A REFEREE]

CASE NO. 92,484

THE FLORIDA BAR,
Petitioner\Counter-respondent,

vs.

CALVIN DAVID FOX,\Counterpetitioner,
Respondent\Counter-Petitioner.
_____/

VERIFIED MOTION TO VACATE AND FOR REHEARING;
VERIFIED STATEMENT OF GOOD CAUSE

COMES NOW, the Respondent CALVIN DAVID FOX, pursuant to Rule 1.530 and Rule 1.540 Florida Rules of Civil Procedure and submits this Verified Motion to Vacate and for Rehearing and Statement of Good Cause, and as grounds therefore shows:

[EXCERPT]

13.) That where the Florida Bar has repudiated its agreement of thee is a mistake of fact, this Referee's order and Findings should be vacated, where the undersigned specifically predicated his agreement to produce documents upon the cooperation and existence of an agreement with the FLorida Bar.

14.) That additionally other clients of the undersigned have specifically prohibited the undersigned from producing any financial records.

15.) That said Findings and Order of this Referee fail to address the parties' agreement, including but not limited to the admission of all documents and transcripts herein; and the confidentiality of documents to be produced.

16.) That said Findings and Order of this Referee deny the undersigned fundamental due process, before the taking of his livelihood and ability to remain a productive citizen and member of the profession.

17.) That said Findings and Order of this Referee imposed permanent irretrievable injury to the undersigned personally and professionally for the remainder of his career, where the undersigned has been willing but unable to cooperate in the face of the most fundamental precept of the profession, that of protecting those most intimate confidences of a client and the sacrosanct attorney/client privilege.

18.) Furthermore, as reflected in the transcript of the status conference of about June 10, 1998 and his RESPONSE in the Florida Supreme Court, the undersigned has acted at all times in good faith herein, upon his desire to protect his client, LINDA SERBIN, from the forced disclosure of her most intimate attorney/client information.

19.) That the undersigned was not aware until August 12, 1998 two (2) days prior to said August 14th hearing before this Referee that Linda Serbin had made any allegations against the

undersigned at the Grievance Committees' January 20th hearing. That from the inception of this matter in September 1996 up to and including the status conferece before this Referee on or about June 10, 1998, Linda Serbin has repeatedly specifically denied to the undersigned that she had made any allegations against the undersigned. That Linda Serbin had specifically denied making any appearance at the Grievance Committee's January 20, 1998 hearing.

20.) That the undersigned is entitled to fundamental due process before the taking of his rights and livelihood and the resulting deprivation of his family and his ability to provide food and shelter for his family.

21.) That Linda Serbin and Jon Serbin have profited substantially by the representation of the undersigned and Jon Serbin initiated this proceeding solely in order to use the Florida Bar to obtain a **double windfall** of more than $22,500 on the sale of the Serbin residence; and five (5) years of free legal services in the defense of the foreclosure of the Serbin residence and prosecution of the Serbin claims against the real estate brokerage. **See Exhibit F** [July 20, 1998 correspondence to Assistant Bar Counsel Wenzel (which is specifically adopted and verified herein)].

22.) That contrary to the testimony of Linda Serbin at the Grievance Committee on January 20, 1998, among other contradictions, the undersigned would also make an offer of proof a.) That he has a written contract and agreement with Linda Serbin for legal services, which the Serbins sat back and accepted all the benefits of; b.) That he has provided

Linda Serbin with both an accounting and a gratuitous refund of monies to Linda Serbin, under a claim of hardship, which the undersigned was under no obligation to refund; and c.) That the reason that Jon Serbin and then Linda Serbin waited more than three (3) years before making any written or oral claim whatsoever, was because of the foregoing facts.

23.) That there is no prejudice in allowing the undersigned fundamental due process before imposing severe, permanent and irretrievable harm upon the undersigned, his family and his extraordinary twenty three (23) year career. See, **Exhibit F;** and **Exhibit G** [resume of the undersigned].

24.) That the Referee in said Recommendation and Order has failed, refused and overlooked to consider the matters upon which this cause was referred to the Referee. See, also, **Exhibit D** (transcript of June 10, 1998).

RSC

(4)

SUPREME COURT, U.S.
FILED
APR 14 2011
OFFICE OF THE CLERK

NO. 10-677

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN DAVID FOX,

Petitioner,

vs.

THE STATE OF FLORIDA BAR ASSOCIATION,

Respondent.

ON PETITION FOR CERTIORARI TO THE
FLORIDA SUPREME COURT

VERIFIED PETITION FOR REHEARING OF DENIAL OF CERTIORARI

CALVIN DAVID FOX
160 Barbados Drive
Jupiter, Florida 33458
(954) 383-5943

STATEMENT OF ISSUES FOR REHEARING

This is a *Verified* petition to rehear the denial of Certiorari of the Florida Supreme Court's order, which dismissed the Petitioner's Verified Petition to Vacate the indefinite eleven (11) year old *temporary* suspension of his law license upon a claim of his failure to comply with a Grievance subpoena, which all documents were produced on *February 29, 2000,* and the Petitioner claims compliance:

1.) The Court has overlooked that my other client, *19 year old Bess Serbin, who had been raped since she was 9 by Jon Serbin, never waived her attorney client privilege* and the Respondent has *mislead* this Court into denying review by falsely claiming that the Petitioner agreed to produce records at the SETTLEMENT HEARING, where in fact, the Petitioner attempted to recite the terms of a letter agreement to produce records, made two days earlier with new prosecutor Wenzel, *which included keeping all records confidential in order to protect the confidences of Bess Serbin,* but Wenzel's supervisor, Sankel, refused to honor the agreement of confidentiality of records in the order she submitted.

2.) The Respondent *mislead* this Court into denying review, based upon the January 29, 2002 letter where Boggs speculates what could be needed, but concludes, as a condition precedent that, "[We] *will advise you further . . . before we may consider the issue of your continuing suspension,"* but more than nine (9) years later, the Respondent has *not bothered* to "advise further," and no advice will ever be forthcoming,

inasmuch as on Friday, April 8, 2011, the Petitioner viewed records and Sankel closed all files on *April 5, 2001* and erroneously marked them "*probable cause found on 02/29/2000.*"

3.) This Court has overlooked that the Petitioner has sworn under oath that he does not possess and/or cannot produce any more records other than the records produced on February 29, 2000, which the *same* Grievance Committee, as had issued the subpoena, found were "satisfactory" and closed its files on all Serbin complaints and trust record keeping, but, more than ten (10) years later, the Florida Supreme Court and the prosecutor have done nothing, because there is no judicial oversight because the Petitioner has no rights under Rule 5-1.2(f)(1) and its successor.

4.) The Court has overlooked that the Florida Supreme Court has failed to honor the terms of its November 24, 1999 order, which requires a Referee hearing upon the dispute herein as to "satisfactory" compliance, which has been ignored because there is no judicial oversight, and the Petitioner has no rights.

5.) This Court should grant review or vacate and remand upon *Connick v. Thompson*, 563 U.S. ____ (2011), in which this Court reaffirmed the correct role of the prosecutor, disregarded by Florida prosecutors.

6.) This Court's inclination to grant certiorari at the Court's conference on January 10, 2011 was correct in that Rule 5-1.2(f)(1) is unconstitutional.

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1.) This Court should grant review or vacate and remand upon *Connick v. Thompson*, 563 U.S. ____ (2011), Slip Opinion, March 29, 2011, in which this Court reaffirmed the correct role of the prosecutor, which has been abandoned, and there is no judicial oversight, because attorneys have no rights. 4-6

2.) The Respondent *mislead* this Court into denying review, upon the SETTLEMENT HEARING, because there was no agreement to produce records, where prosecutor, SANKEL, refused to honor the agreement to keep records *confidential* in order to protect the *confidences* of my client, 19 year-old Bess Serbin. . .6-8

3.) The Respondent *mislead* this Court into denying review, upon the Boggs January 29, 2002 letter which concludes, 'We'll get back to you,' and for more than nine (9) years prosecutors have done nothing and will do nothing, because Sankel closed *ALL FILES* on April 5, 2001 and there is no judicial oversight. . . 8-9

4.) This Court has overlooked that the Petitioner responded under oath that Petitioner does not possess and/or cannot produce any more records other than the *same* records produced on February 29, 2000, which the Respondent has and were "satisfactory" to the *same* Committee which issued the subpoena. . 9-13

5..) The Court has overlooked that the Florida Supreme Court order requires a hearing by a Referee upon any dispute as to "satisfactory" compliance and there is a dispute as to compliance, but the Florida Supreme Court deferred to the judgment of prosecutor, Sankel, because the Petitioner has no rights 9-13

6.) This Court's inclination to grant certiorari at the Court's first conference on this case on January 10, 2011 was correct in that Florida Rule 5-1.2(f)(1), renacted in 2010, is unconstitutional, because the Petitioner has no rights; and the Florida Supreme Court exercises no judicial oversight. 13-14

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The due process clause of the Fourteenth Amendment to the United States Constitution provides that:

> "No State shall. . .deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 5-1.2(f)(1) Fla Bar Trust Accounting Rules, for prosecuting attorneys, provides. inter alia, that:

> "Members of the bar . . . may not assert any privilege personal to the lawyer . . ."

STATEMENT OF PROCEEDINGS

A syllabus of the four (4) hearings is as follows:

1.) *EX PARTE* HEARING. See, A10-15. January 20, 1998: Grievance Committee on *Complaint of Jon Serbin,* but off-record hearing on compliance Florida Conflict Rules, ignored (A10-A15) ; Linda Serbin unsworn on telephone; Linda Serbin's signature is forged on written statement presented by Jon Serbin. Prosecutors Evans and Sankel.

2.) STATUS HEARING. A28-48 June 10, 1998: Referee: Won't consider Grievance errors; Petitioner argues "horns of dilemma" and for *in camera* production of records; Sankel refuses *in camera examination*; Serbin's June 6th statement produced. By Prosecutor Wenzel, & his supervisor, Sankel.

3.)SETTLEMENT HEARING. A49-59. August 14, 1998: Referee on August 12th settlement conference with new prosecutor Wenzel and Petitioner's settlement letter to Wenzel. Wenzel produced January 20, 1998 transcript of "Linda Serbin" telephone testimony; Sankel creates train wreck by taking case from Wenzel to prepare order which omits all settlement letter terms and Petitioner's demand that all proceedings remain confidential to protect 19 year old Bess Serbin's confidences. By Prosecutor Wenzel & his supervisor, Sankel.

4.) DISCHARGE OF COMPLAINTS. February 29, 2000: *Same* Grievance Committee meets again on *same* notice (A60) as January 20, 1998, issued by Wenzel as "*Complaint of Jon Serbin*" (A61) and a failure to maintain trust accounting records, before the *same* Committee as on January 20, 1998, but with Linda Serbin, Jon Serbin, Ruga the Florida Bar Auditor and the Petitioner testifying. Committee finds no probable cause upon complaint of Jon Serbin, and no technical trust accounting records violations. By Prosecutor Wenzel only.

At the STATUS hearing, the Petitioner presented that he is on the "horns of dilemma" of whether to defend himself or to protect his clients, Linda Serbin and Bess Serbin's attorney client privileged information and this could be resolve by an *in camera* review of records, which Sankel refused:

"THE REFEREE: Again, the Bar received information that you received a trust account

deposit of some $25,000. Mr. Serbin says that his wife didn't get the money.
As I say, I don't know that it matters whether he was your client . .

MR. FOX: it matters greatly, Your Honor.

THE REFEREE: Tell me why.

MR. FOX: if you read my responses, every time they sent me a subpoena. I responded by saying, Please, I need additional time.
Also, I stated to them that Jon Serbin was not my client at that time and that in order to respond to this matter, Linda Serbin must waive attorney-client privilege matters.

She has not. She refuses to. She told the investigator she would not waive it. She told their investigator that in fact she does not wish to make a complaint. Everything is fine with her.

I think that I cannot be blackmailed by Mr. Jon Serbin into disclosing Linda Serbin's client-attorney matters in order to defend this case.

I am put on the horns of a dilemma by the Bar. In order to defend this case, I must disclose attorney-client information matters.
The client has declined to allow me to do that, repeatedly.
I am on the horns of a dilemma, Your Honor.

* * *

MR. WENZEL: Actually, they had her on the telephone and they took a statement from Mrs. Serbin via telephone.

MR. FOX: There is nothing in the record about that.

MR. WENZEL: I was informed at the last Grievance Committee meeting by Mr. Freshman that she was on the telephone and there is a transcript of those proceedings.

MR. FOX: There is nothing in the records that I have been provided that was filed in the Supreme Court of Florida that mentions that.

STATUS HEARING, Appendix at 34-35

REASONS TO GRANT REHEARING

1.) The Court should review or vacate and remand this cause under Connick v. Thompson, 563 U.S. ___ (2011), slip opinion, March 29, 2011.

Subsequent to the denial of the present petition, this Court in Connick v. Thompson, 563 U.S. ___ (2011), reaffirmed the role of a prosecutor in assuring fundamental due process:

> "The role of a prosecutor is to see that justice is done. Berger v. United States, 295 U.S. 78,88 (1935). 'It is as much [a prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.' *Ibid.*"

Prosecutor Sankel's role in the case at bar was unrelated to a just result. Her continuing, single-

minded focus is to cripple the Petitioner's ability to work, *indefinitely*. The Petitioner has advanced possible reasons for such injustice. The Respondent has ridiculed the Petitioner's analysis, but has offered no reasons of its own for the *unconscionable* delay, and patent prosecutorial misconduct, except that the Petitioner has no rights under Rule 5-1.2(f)(1)(1992). The Florida Supreme Court has washed its hands of all judicial oversight, because the Petitioner has no rights under Rule 5.1.2(f)(1). Sankel's methods, therefore, have no relationship to the justice of this cause, but that is okay in Florida and a few other states, because the Petitioner has no rights.

But, even more chilling is that the Florida Supreme Court has abdicated its judicial oversight in favor of relying upon unfettered prosecutorial discretion, because the Petitioner has no rights in Florida and a few other states. The undisputed facts and circumstances herein are therefore in direct conflict with the foregoing duty of prosecutors to insure fundamental due process, reaffirmed in *Connick v. Thompson*.

Reviewing this cause under *Connick* and *Berger* would allow this Court to decide an issue of great importance to, lawyers, who are a large and familiar population of "persons" within the meaning and intent of the due process clause, whose right to due process this Court should address. Under Florida's Rule 5-1.2(f), lawyers have no rights, which also denigrates their clients' rights and the integrity of the process. Furthermore, at least nine (9) states disagree with

such a rule. Therefore, this Court should go with its first impression of the justice of this cause, at the Court's first conference in January 2011, and grant review or vacate and remand this cause. Cf., *Florida v. Rodriguez,* 463 U.S. 940 (1983)(granting rehearing of denial of certiorari, granting review and vacating and remanding); *Florida v. Rodriguez,* 469 U.S. 1 (1984) (granting certiorari and reversing state court in same case again).

2.) The Respondent has mislead this Court into denying review, by claiming the Petitioner agreed to produce records at the SETTLEMENT HEARING, but omitting that there was no agreement to produce records, where Wenzel's supervisor, Sankel refused to honor the settlement agreement and Bess Serbin, raped since she was 9 by Jon Serbin, never waived her confidences, even if Linda Serbin did.

The Respondent has mislead this Court into denying review, by claiming that the Petitioner agreed to produce records because Linda Serbin had caved in and waived her rights to confidentiality. In fact, the Petitioner was only in the process of reciting the proposed written settlement agreement with new prosecutor, Wenzel, after a settlement conference with Wenzel, two days earlier, on August 12, 1998. A2-A3 (Letter to Wenzel, recited in Motion to Vacate). On August 12, 1998, Wenzel had suddenly provided the transcript of *Linda Serbin's* purported telephone testimony from the EX PARTE hearing on January 20, 1998. Telephone testimony of an absent witness is useless in Florida without an agreement by all parties. Trawick's Florida Practice and Procedure (2003), p.335; 341; Rule 2.071

Fla.RulesJud.Admin. However, Linda Serbin had been finally badgered into a sworn complaint as required by Florida Bar Grievance Procedures, on June 6, 1998, which had been sprung upon the Petitioner at the STATUS HEARING on June 10, 1998. See, A40-A41. It remained undisputed that her signature had been forged on the statement produced by Jon Serbin at the EX PARTE hearing; and Linda had uniformly denied making any claim. See, also, A62-A66, Letter to Boggs, 7/24/98 2d of 5).

This Court has overlooked and ***must*** appreciate that the Petitioner remained completely skeptical of the voluntariness of any of the Florida Bar/Jon Serbin, manufactured Linda Serbin complaints, knowing that for nine (9) years this woman was threatened, coerced and beaten into silence, while her husband also raped and beat her daughter. The voluntariness of forcing her to sign cursory Florida Bar complaints, which waived her right to confidentiality, was incredibly suspect.

This Court has overlooked and ***must*** consider that my client, 19 year old Bess Serbin, raped by Jon Serbin since she was 9, did ***not*** waived her rights and required the Petitioner to keep her confidences:

> "c.) That the documents submitted by the undersigned would remain in strict confidence pending their examination, to protect not only Linda Serbin, but other clients, who have stated that they do not wish to release their financial documents to anyone. . ." A2-A3 Letter to Wenzel quoted in Motion to Vacate.

However, neither the ground of confidentiality for the settlement of this cause nor any of the other conditions were honored by Wenzel's supervisor, Sankel, when she overruled Wenzel's agreement and forwarded her version of a settlement order to the Referee. A1-A9 (Motion to Vacate). It was *undisputed* that the Petitioner had no communication nor agreement with Sankel and actually had no idea who she was. A43; A59 (Sankel admits no communication with Petitioner).

The Respondent has also mislead this Court by failing to mention that the Florida Bar Complaint form requires that complaints be in writing and under oath:

> "Signature. You must sign the form and certify under penalty of perjury that your allegations are true. Unsworn complaints are not considered." www.FloridaBar.org

That is why for almost two years, prosecutor Evans secretly harassed Linda Serbin to make a written complaint, which she uniformly refused to do, while your Petitioner represented her in multiple ongoing judicial proceedings. A63-A66 Letter on July 24, 1998 to Boggs and A16-A28 *Letter, July 20, 1998, to new prosecutor Wenzel,* both appended hereto. In the SETTLEMENT HEARING on August 14, 1998 the Petitioner, only agreed to produced "satisfactory" documents, *only* if the documents remained confidential for Bess Serbin, whose rights were intricately interwoven with her mothers. Appendix at A2-A3.

3.) The Respondent has mislead this Court into denying review, relying upon the 2002 John Boggs letter of, 'we'll- get- back- to- you'; but omitting that nine (9) years later, neither Boggs nor Sankel have bothered to 'get back' to the Petitioner because Sankel closed all files on April 5, 2001.

Trying to avoid review by this Court, the Respondent has mislead the Court by reciting the *January 29, 2002*, letter by Director Boggs, who after repeated letters from the Petitioner (e.g. A63-A68) and a meeting with the President of the Florida Bar, refers to the *frivolous* Jon Serbin complaint as being a valid "seed" to rummage through records, but states a *condition precedent* to any further consideration:

> "We are reviewing what we know of your trust accounting compliance *and will advise you further* regarding what we believe you need to accomplish *before* we may consider your continuing issue of suspension." Respondent's Appendix p. 38a.

This Court has overlooked that nine (9) years later, and up to the filing of this motion, no "advice" has been forthcoming and the Respondent has no intent to give any "advice," inasmuch as on Friday, *April 8, 2011*, the Petitioner discovered that Sankel closed all files on *April 5, 2001* (A68) and *erroneously* marked the file, *"probable cause found 02/29/2000,"* notwithstanding that the *same* Grievance Committee, upon the *same* notice (compare, A60 with A61) *exonerated* the Petitioner on 02/29/2000 of any wrongdoing, *including the production of all trust accounting documents.*

The failure to adhere to record-keeping a case is only subject to only a few months suspension. *Compare, e.g., The Florida Bar v. Dunagan*, 731 So.2d 1237 (Fla. 2000) [*ninety (90) day suspension for trust account irregularities*]. Instead, this cause has been left to rot upon the unfettered and erroneous discretion of prosecutor, Sankel, without regard to justice, Florida Bar guidelines, nor statutes of limitation notwithstanding no one has made any complaint about trust accounting before or since.

4.) The temporary Suspension of the Petitioner to produce records, which have already been satisfactorily produced for the same Grievance Committee which issued the subpoena, or which the Petitioner does not possess and/or can longer produce is unconscionable and a denial of fundamental due process; and the Florida Court has ignored its temporary suspension order which requires a hearing on satisfactory compliance, which is in dispute.

The order of suspension dated November 24, 1999 provides specifically that in any dispute as to "satisfactory" compliance there should be a hearing:

> "Any dispute as to whether compliance is *satisfactory* shall be determined by the referee." Respondent's Appendix at 2a.

In this cause, the Florida Supreme Court abandoned any semblance of judicial oversight, where all it did was to ask prosecutor, Sankel, if there had been compliance and then dismissed the case when Sankel said there was no complaince. Respondents' Appendix at 42a.

The undersigned responded below with sworn statements that all the records that could be produced were "satisfactorily" produced to the *same* Grievance Committee on February 29, 2000, which it still has, and no other records can be produced:

> "2.) The order of temporary suspension in Case 92,484 provides . . . only that the suspension is temporary until the Florida Bar reports to this Court that the Respondent has complied with the September 1997 Grievance Committee Subpoena. Said order. . . has no other conditions and does not provide for a petition for reinstatement. . .
> 3.) That Arlene Sankel has reported to this Court that the undersigned has not complied with the 1997 11I Grievance Committee subpoena, which is the subject of Florida Supreme Court Case 92,484. Sankel's report is misleading and is based upon a condition, which Ms. Sankel knows cannot occur.
> 4.) The issue of the 1997 11I subpoena was resolved by Mr. Gregg Wenzel of the Florida Bar Miami office. After Mr. Wenzel left the offices of the Florida bar, the Respondent hired lawyer, Andrew Berman 305.945.1851, to resolve the inability to provide any more documents for the 1997 11I Committee subpoena in this cause. However, Mr. Berman reported that Arlene Sankel was consumed by a blind rage against the undersigned and conversations with her were so ugly as to be not worth relating. See, "Verified Motion to Strike Notice of

Appearance and Disqualify Arlene Sankel," filed herein.

5.) On or about July 20, 1998 the Respondent had told Gregg Wenzel of the Miami office of the Florida Bar that the Respondent did not have records to produce. Gregg Wenzel replied to the Respondent that he did not need the 1997 11I Committee subpoena to get all of the Respondent's Trust bank records and therefore went and got them for the Florida Bar's Auditor.

6.) Therefore on February 29, 2000, Committee 11I heard from all witnesses and the Florida Bar auditor, who had all the Respondent's bank trust account records, available for the 1997 subpoena. The Auditor testified that there was nothing in the records which indicated the Respondent had done anything wrong. In addition to the Florida Bar auditor, Gregg Wenzel was the only other official present for the Florida Bar.

7.) Arlene Sankel was not present at the February 29, 2000 hearing and has no first hand knowledge of the hearing.

8.) That the undersigned told Wenzel, after the Florida Bar Auditor had testified at the hearing on February 29, 2000 that the Respondent had no other records to produce. The Respondent is unable to produce non existent documents in order comply any further with the 1997 11I Committee subpoena and this Court's order of temporary suspension in Case 92,484.

* * *

> 10.) That there have been no timely complaints of any kind about the Respondent nor any reported to the Respondent since Jon Serbin's frivolous, groundless complaint herein in 1996. Petition Appendix at 63-65 *Affidavit to Correct Report of Arlene Sankel of No Compliance*

See, also, Petition Appendix: 48-51 *Motion to Disqualify*; 53-55 *Reply to Florida Bar Response*; 58, *Motion for Rehearing, Compliance with Subpoena* paras. 7, 8, 9. Despite a "dispute" as to "satisfactory" compliance," The Florida Supreme Court deferred blindly to the judgment of prosecutor Sankel and neither set a hearing nor referred this matter to a referee, because the Petitioner has no rights. This Court has overlooked that the ongoing delay of nine (9) years to "advise" what may be "satisfactory," is unconscionable.

5.) This Court's Inclination to Grant Review at the Court's First Conference was correct: Florida Rule 5-1.2(f)(1) is unconstitutional.

At its initial conference, this Court was inclined to grant review. In denying review, Court has overlooked that the Respondent failed to offer any defense to the constitutionality of Florida Bar Rule, 5-1.2(f)(1) which denying all lawyers rights and thereby allows the Florida Supreme Court to abandon judicial oversight and its prosecutors to serve in all roles, with impunity.

As a consequence, the temporary suspension herein has been left to rot for eleven (11) years without fundamental due process. If this Court's

review is denied, the message to lawyers is, 'look out for yourself,' because look at what happened to Fox when he stood up for his clients rights: nobody did anything and his career, family and health were destroyed. *See*, A68, Calvin David Fox; "Lawyers could lose licenses," *The Palm Beach Post,* March 24, 2011, p. 1A ("Florida Bar President, Mayanne Downs, "[disbarment] *is the death penalty of the legal profession . . .*"].

Please remember when each member of this Court was just a lawyer. Please consider whether you would have caved-in to save your career and family *or* would you have also fought against the tyranny of this circumstance, despite the horrendous personal risk, because you believed that sometime during this *train wreck*, this Court would step forward and truth and justice would prevail and the profession would be better.
That is what I believe.

CONCLUSION

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that this Motion for Rehearing of the denial of the Petition for Certiorari jurisdiction be granted.

CALVIN DAVID FOX
160 Barbados Drive
Jupiter, Florida 33458
(954) 383-5943

CERTIFICATE

I HEREBY CERTIFY, that this Motion for Rehearing is submitted in compliance with Rule 44.2 and is submitted in good faith and not for purposes of hindrance or delay.

CALVIN DAVID FOX

AFFIDAVIT

CALVIN DAVID FOX

STATE OF FLORIDA

COUNTY OF PALM BEACH:

CAME AND APPEARED, before me the undersigned authority, Calvin David Fox, who first having identified himself, hereby swears and affirms under penalty of perjury that the foregoing Petition for Rehearing of Denial of Certiorari is a true and correct statement of fact.

NOTARY PUBLIC

Appendix to Motion for Rehearing

IN THE SUPREME COURT OF FLORIDA
[BEFORE A REFEREE]
CASE NO. 92,484

THE FLORIDA BAR,
Petitioner\Counter-respondent,
vs.
CALVIN DAVID FOX,\Counter petitioner,
Respondent\Counter-Petitioner.
_____/

VERIFIED MOTION TO VACATE AND FOR REHEARING;
VERIFIED STATEMENT OF GOOD CAUSE

COMES NOW, the Respondent CALVIN DAVID FOX, pursuant to Rule 1.530 and Rule 1.540 Florida Rules of Civil Procedure and submits this Verified Motion to Vacate and for Rehearing and Statement of Good Cause, and as grounds therefore shows:

1.) That on September 9, 1998 the undersigned received this Referee's letter dated September 2, 1998 and the enclosed documents entitled, Order dated September 4, 1998; and Findings and Recommendations dated September 4, 1998. The Referee's Letter provides that the undersigned may provide an affidavit of compliance or statement of good cause by Friday, September 4, 1998 or the Referee would enter an appropriate order or report on Friday, September 4, 1998.

2.) That on September 9, 1998 the undersigned also received the Affidavit of Bar Counsel Arlene Sankel that no documents had been produced as of September 4, 1998, although the undersigned had requested additional time by hand-written

correspondence to Assistant Bar Counsel Gregg Wenzel.

3.) That on August 14, 1998 this cause was scheduled for an evidentiary hearing before the Referee, at which time the Florida Bar was supposed to present its case for non-compliance and the undersigned would be allowed to respond and to provide his own evidence and to show cause as to why he had not appeared and responded to the Grievance Committee's request for documents at its hearing on January 20, 1998. Said Grievance Committee hearing was scheduled upon the, Complaint of Jon Serbin, and the related Grievance Committee Subpoena for documents, dated September 22, 1997, which was based solely upon the Complaint of Jon Serbin. See, Exhibit 16 to Verified Response to Petition, Entitled 'Notice of Non-compliance with a Grievance Committee Subpoena' [hereinafter the Response] and specifically adopted and made a verified part of the record and this Motion herein.

4.) That at the scheduled date for the hearing in this cause on August 14, 1998, in a meeting with the Referee in Chambers prior to commencing the hearing, the undersigned announced to this Court that the parties had reached an agreement to produce records because of the disclosure of the oral complaint of Linda Serbin to the undersigned two (2) days prior to the August 14th hearing. See, Exhibit A, hereto [transcript of August 14, 1998]. The undersigned specifically stated his desire to settle this matter without any further expenditure of time and in order to get to the merits of the Jon Serbin and now apparently Linda Serbin complaint.

The undersigned therefore commenced to state

the text of the agreement, which the undersigned had made with Attorney Gregg Wenzel, at his meeting with Assistant Bar Counsel Gregg Wenzel two (2) days earlier, which was as follows:

a.) That all documents submitted by either side up to the date of the August 14th hearing would be admitted into evidence;

b.) That the two transcripts of the status conference before the Referee on June 10, 1998 and the Grievance Committee hearing on January 20, 1998 would be admitted into evidence;

c.) That the documents submitted by the undersigned would remain in strict confidence pending their examination, to protect not only Linda Serbin, but other clients, who have stated that they do not wish to release their financial documents tc anyone;

d.) That this cause would thereafter be remanded or a recommendation for remand would be made to the Grievance Committee in order to address any substantive issues remaining; and

e.) That each party would bear its own fees and costs prior to the August 14th hearing date; and

f.) That the Referee's announced denial of the Motion to Disqualify would be stated in any order.

Cf., Exhibit B, attached hereto (Correspondence to Attorney Wenzel).

At the conclusion of the August 14th hearing, Assistant Bar Counsel Wenzel, also wanted this Referee to issue an order that the undersigned shall be suspended if he did not, *comply* with the Referee's order, which the Referee specifically declined to do. Exhibit A at page 11.

5.) Notwithstanding that the Referee had specifically declined to make said order of immediate suspension, Bar Counsel, Arlene Sankel, thereafter proposed to send the Referee an order, which ordered that the undersigned would be suspended if he failed to comply with the Referee's order. Furthermore, Ms. Sankel's proposed order failed in any respect to adhere to the parties agreement; failed to state the agreement to admission of evidence; failed to address any issue of confidentiality; failed to address the Referee's decision upon the Motion to Disqualify; and as noted specifically stated that the undersigned would be immediately suspended if he did not comply with the Referee's order. Exhibit C, appended hereto.

6.) That if this Referee will recall **and it is specifically restated herein under penalty of perjury**, that the concern of the undersigned at all times since he was first requested to respond in this matter on September 6, 1996 (see, RESPONSE at pp.1-2; 10-11; and RESPONSE at Exhibits 2, 3, 4, and 5), is that in order to defend against the complaint of Jon Serbin, the undersigned must violate the confidences of his only client in this matter, Linda Serbin. See Exhibit D attached hereto (transcript of status conference herein on or about June 10, 1998). **That the disclosures, which the Florida Bar has been seeking herein since September 9, 1996 and at all times not in confidence, would subject the undersigned to being a witness against Linda Serbin in both civil and criminal matters; and would further subject Linda and Jon Serbin to criminal and civil prosecution for crimes in both federal and state courts.**

7.) That furthermore, the undersigned was also specifically prohibited from complying with said September 22, 1997 subpoena at the invitation of the

Grievance Committee, by attending the Grievance Committee's hearing on January 20, 1998, because of settled rules of procedure regarding conflicts in the 11th Circuit. See, RESPONSE, at pp. 4-10; and Exhibits 15 to 18.

8.) That the Grievance Committee was also informed and accepted as factual that the undersigned was in trial in Washington at the time and date scheduled for said Grievance Committee hearing and was thus unable to attend and defend against the unsworn allegations of Linda Serbin, presented for the first time at said January 20, 1998 11th Circuit Grievance Committee hearing. See, Exhibit E, attached hereto, at pp. 3-15.

9.) That the undersigned was denied fundamental due process herein prior to the Grievance Committee's finding of non-compliance and the filing of the Notice by Assistant Bar Counsel, Elena Evans. See, Id.

10.) That the foregoing, which the undersigned has complained of herein since October 1996 and the offer of proof what he would have presented to the Grievance Committee stated herein at paragraph 22 below, constitute good cause for his responses to the Grievance Committees and his inability to respond further to the 11th Circuit Grievance Committee's September 22, 1997 subpoena.

11.) That the foregoing, which the undersigned has complained of herein since October 1996; the offer to proof of what he would have presented to the Grievance Committee stated herein at paragraph 22 below; and the following circumstances stated below, constitute good cause for his inability to respond further to the 11th Circuit Grievance Committee's

September 22, 1997 subpoena; this Referee's Letter of September 2, 1998 requesting a response by September 4th; the parties' Agreement presented on August 14th; and this Referee's September 4, 1998 Order.

12.) That said Findings and Order of this Referee overlook and have failed to consider that the August 14th agreement was an agreement conditioned upon the Florida Bar's agreement as stated above.

The undersigned specifically complained on Wednesday, August 26t to Bar Counsel Arlene Sankel as to the foregoing deficiencies in the order she proposed to submit to the present Referee and the undersigned, **this was supposed to be done under an agreement and if there is no agreement we have no deal to produce anything.**

13.) That where the Florida Bar has repudiated its agreement of thee is a mistake of fact, this Referee's order and Findings should be vacated, where the undersigned specifically predicated his agreement to produce documents upon the cooperation and existence of an agreement with the FLorida Bar.

14.) That additionally other clients of the undersigned have specifically prohibited the undersigned from producing any financial records.

15.) That said Findings and Order of this Referee fail to address the parties' agreement, including but not limited to the admission of all documents and transcripts herein; and the confidentiality of documents to be produced.

16.) That said Findings and Order of this Referee deny the undersigned fundamental due process, before the taking of his livelihood and ability to remain a productive citizen and member of the

profession.

17.) That said Findings and Order of this Referee imposed permanent irretrievable injury to the undersigned personally and professionally for the remainder of his career, where the undersigned has been willing but unable to cooperate in the face of the most fundamental precept of the profession, that of protecting those most intimate confidences of a client and the sacrosanct attorney/client privilege.

18.) Furthermore, as reflected in the transcript of the status conference of about June 10, 1998 and his RESPONSE in the Florida Supreme Court, the undersigned has acted at all times in good faith herein, upon his desire to protect his client, LINDA SERBIN, from the forced disclosure of her most intimate attorney/client information.

19.) That the undersigned was not aware until August 12, 1998 two (2) days prior to said August 14th hearing before this Referee that Linda Serbin had made any allegations against the undersigned at the Grievance Committees' January 20th hearing. That from the inception of this matter in September 1996 up to and including the status conferece before this Referee on or about June 10, 1998, Linda Serbin has repeatedly specifically denied to the undersigned that she had made any allegations against the undersigned. That Linda Serbin had specifically denied making any appearance at the Grievance Committee's January 20, 1998 hearing.

20.) That the undersigned is entitled to fundamental due process before the taking of his rights and livelihood and the resulting deprivation of his family and his ability to provide food and shelter for his family.

21.) That Linda Serbin and Jon Serbin have profited substantially by the representation of the undersigned and Jon Serbin initiated this proceeding solely in order to use the Florida Bar to obtain a **double windfall** of more than $22,500 on the sale of the Serbin residence; and five (5) years of free legal services in the defense of the foreclosure of the Serbin residence and prosecution of the Serbin claims against the real estate brokerage. **See Exhibit F** [July 20, 1998 correspondence to Assistant Bar Counsel Wenzel (which is specifically adopted and verified herein)].

22.) That contrary to the testimony of Linda Serbin at the Grievance Committee on January 20, 1998, among other contradictions, the undersigned would also make an offer of proof a.) That he has a written contract and agreement with Linda Serbin for legal services, which the Serbins sat back and accepted all the benefits of; b.) That he has provided Linda Serbin with both an accounting and a gratuitous refund of monies to Linda Serbin, under a claim of hardship, which the undersigned was under no obligation to refund; and c.) That the reason that Jon Serbin and then Linda Serbin waited more than three (3) years before making any written or oral claim whatsoever, was because of the foregoing facts.

23.) That there is no prejudice in allowing the undersigned fundamental due process before imposing severe, permanent and irretrievable harm upon the undersigned, his family and his extraordinary twenty three (23) year career. **See, Exhibit F;** and **Exhibit G** [resume of the undersigned].

24.) That the Referee in said Recommendation and Order has failed, refused and overlooked to consider the matters upon which this cause was

referred to the Referee. See, also, Exhibit D (transcript of June 10, 1998).

25.) That the Referee has overlooked that the Motion to Disqualify should have been granted where the Referee is called upon herein to impose irretrievable harm upon a former political opponent, who previously had sought before this Court to stop the Referee from obtaining the current political appointment, which the Referee presently occupies and is using to judge the undersigned. Surely in this circumstance, which is well-known to the Referee, it is incumbent upon the Referee to **sua sponte** remove himself in these circumstances, irrespective as to procedural niceties or when the matter may have been ripe for presentation by the parties.

26.) That there is no lawful probable cause for this proceeding in these circumstances.

27.) That this Court and/or the Referee has not lawfully acquired jurisdiction in this cause in these circumstances.

28.) That this Court and/or the Referee has not lawfully acquired jurisdiction in this cause as verified in the RESPONSE within the meaning and intent of **Mabie v. Garden Street Management**, 397 So.2d 920 (Fla. 1981) and its progeny, where two (2) previous Grievance Committees have declined to proceed herein after receiving the response of the undersigned that JON SERBIN is not his client.

29.) I hereby swear upon penalty of perjury that the foregoing is true and correct within the meaning and intent of Title 28 U.S. Code, Section 1746. Executed on this 14th day of September, 1998.

[EXCERPT] RESPONSE IN FLORIDA SUPREME COURT [On Motion to Continue January 20, 1998 Grievance Committee Hearing].

Upon receipt of said Notice and after confirming it would not be abated, on January 8, 1998 in a formal document not provided to this Court in the BAR's petition herein, the undersigned notified the BAR and Chairman, LAWRENCE N. FRESHMAN, that the undersigned had a patent conflict in a matter, which had precedence under the conflict rules of the jurisdiction. Exhibit 6 (Fifth Response and exhibits). This document was forwarded by facsimile to both Mr. Freshman and the BAR to insure its prompt delivery. Id. The conflict, which the undersigned reported was a previously scheduled trial, in Robert Morriss v. Tutor Time Child Care Systems, American Arbitration Case 75-114-0166-97 commencing at 9:00 a.m. on January 20, 1998 in Seattle, Washington. See, Exhibit 15 (itinerary; plane ticket; rental car and hotel receipt). In the report oft he conflict, the undersigned expressed the foregoing good faith and specific intent:

> 3.) That the undersigned is most desirous of appearing before the Committee and presenting documents and evidence in support of his position in this matter.
> 4.) That an appearance by the undersigned and the complainant would be most appropriate for the Committee to reach a just and correct result.

Exhibit 6, p.3.

On January 12, 1998, when the undersigned had

not received any response from either Ms. Evans or Chairman FRESHMAN, the undersigned again notified FRESHMAN and Ms. Evans of the conflict presented by the previously scheduled trial in Morriss v. Tutor Time Child Care Systems, Inc. Exhibit 7. Said Notice has apparently also not been provided to this Court in the BAR's present petition. Said January 12th notice was also forwarded by facsimile to both FRESHMAN and Ms. Evans at the BAR's offices in order to insure its prompt delivery. In said January 8th response the undersigned indicated the following good faith and specific intent:

> We are most desirous of appearing before the Committee and appreciate this opportunity. However the trial proceedings set in Washington are to commence on January 20, 1998 . . .
> Exhibit 7.

In order to assure that the foregoing Notices were received and acted upon, on Thursday, January 15th, 1998, the undersigned contacted the BAR's counsel, ELENA EVANS by telephone. Ms. Evans informed the undersigned that FRESHMAN, in his discretion had refused to reschedule the January 20th hearing. No information was requested by Ms. Evans and no reason was offered by Ms. Evans for FRESHMAN's refusal to reschedule the January 20th hearing other than FRESHMAN had the discretion to refuse to reschedule the January 20th hearing. On January 16th the undersigned again attempted to contact the BAR's counsel, but was successful in only speaking with her secretary and indicating that the undersigned was desirous of producing documents. Exhibit 8.

On or about Tuesday, January 27, 1998, after the undersigned returned from his trial in Washington, the undersigned received a letter from FRESHMAN indicating that FRESHMAN had received the January 12th Notice of conflict letter from the undersigned. Exhibit 16. In said letter FRESHMAN recites that he called, but does not say that he left any message and he says that the undersigned should give FRESHMAN, *additional information*:

> Receipt is hereby acknowledge of your letter dated January 12th. However, when I attempted to contact you to discuss the contents of your letter, I got an answering machine.
>
> In any event, I cannot reset the hearing on January 20th unless you provide me additional information. Therefore, please contact me to discuss the matter.
>
> **Exhibit 16.**

In his report entitled, Findings of Grievance Committee I of the Eleventh Judicial Circuit as to Non-Compliance with a Subpoena, FRESHMAN attempts to mislead this Court and the BAR with the following statement implying that FRESHMAN had actually communicated with t undersigned and the undersigned had REFUSED to cooperate after being told more information was required:

> The Chairman of Grievance Committee I asked Respondent for details concerning Respondent's unavailability. Respondent failed to provide any details. [Emphasis added].

Although FRESHMAN's letter is coy about the issue, FRESHMAN did not leave any message if he did

actually call.[1] Why FRESHMAN would not leave a message in this era of e-mail; voice mail and electronic communications is nonsensical. Furthermore, the undersigned has never spoken directly with FRESHMAN about anything. The suggestion that the undersigned had **refused** to provide information, is therefore **patently** false.

Furthermore, the foregoing report by FRESHMAN of an alleged refusal to cooperate, is inconsistent with every document and response filed by the undersigned in these proceedings. The alleged deliberate refusal to cooperate about a matter, which would only assist in facilitating the request of the undersigned with his desire to appear before the committee defies all common sense.

The undersigned submits that the foregoing report of the Committee is a materially false representation by FRESHMAN to the Grievance Committee; to the BAR and to this Court and is designed to corrupt these proceedings; to mislead this Court; and to deny the undersigned due process and his right to be heard in a matter, which is obviously

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[2] At or **before** the January 20th hearing, the undersigned also would have inquired as to a conflict of interest against FRESHMAN regarding a previous claim of fraud and misconduct filed by the undersigned, which may have been against FRESHMAN and his firm. There may be other conflicts of interest regarding other members of the Committee as listed. **See, Exhibit 6** (at list of Committee members). The opportunity to addresses these issues was not allowed in this circumstance.

controvertable.

After receipt of this Court's notice on March 6, 1998, and the BAR's petition herein, this Response follows.

II.
ARGUMENT

A.) CONFLICT ORDERS ARE BINDING

The trial in Seattle, Washington, which the undersigned had to attend on January 20, 1998 at 9:00 a.m. was caused because of a demand for arbitration filed by the client of the undersigned in the United States District Court for the Southern District of Florida. In the Joint State-Federal Judicial Council resolution entitled, RESOLUTION OF THE FLORIDA STATE-FEDERAL JUDICIAL COUNCIL REGARDING CALENDAR CONFLICTS BETWEEN STATE AND FEDERAL COURTS, the previously scheduled trial in a federal court arbitration, which is, first to commence, manifestly took precedence over the administrative hearing set by the 11th Circuit Grievance Committee herein on January 20th. See, Exhibit 17 (Conflicts Resolution by Florida State-Federal Judicial Council).

Furthermore, 11th Circuit Administrative Order 93-64, entitled, IN RE: UNIFORM INTER/INTRA CIRCUIT CONFLICT RESOLUTION PROCEDURE, specifically provides that trial proceedings of any nature and arbitration proceedings shall take precedence over any other type of proceeding. See EXHIBIT 18.

Sub judice, under either the foregoing Florida

State-Federal resolution, or Administrative Order 93-64 of the Florida Eleventh Circuit, Chairman FRESHMAN did not have, **discretion** to deny the request of the undersigned to reschedule the January 20th hearing because of the conflict with the trial proceeding in **Morriss v. Tutor Time Child Care Systems** in Seattle, Washington. This Court should therefore deny the BAR's petition and dismiss this cause, or remand to reschedule the January 20th hearing.

Furthermore, FRESHMAN's representation to this Court, the BAR and the 11th Circuit Grievance Committee that the undersigned had, **refused** to provide any additional information regarding the conflict with the trial proceeding in **Morriss v. Tutor Time Child Care Proceedings** is utterly false and inconsistent with the affirmative good faith and stated intent of the undersigned welcoming the opportunity to appear before the Grievance Committee. There was grossly inadequate communication of FRESHMAN's alleged need for further unspecified information regarding the conflict, which the undersigned had not already conveyed. Furthermore, as reflected in **Exhibit 15** and information already supplied by the undersigned the conflict existed and the trial proceeding in Seattle manifestly took precedence.

Law Offices of Calvin David Fox

July 20, 1998

Gregg D. Wenzel
Assistant Staff Counsel
The Florida Bar
Suite M-100
444 Brickell Avenue
Miami, Florida 33126

RE: Florida Bar v. Calvin David Fox
Sup. Case No. 92,484
Fla. Bar Case 97-70,300(11I)

Dear Gregg:

On this date I received the Re-notice of Hearing filed by your office resetting the above referenced case for July 31, 1998 at 1:30 p.m. If you had conferred with me before resetting this matter, I could have examined my schedule for clear dates. I have a pre-existing, previously scheduled conflict on the July 31st date.

I would request that this matter be reset for Friday, August 14, 1998 or Friday, August 21, 1998. This is within the time allowed for this matter. I have long-standing prepaid commitment for a professional training conference in Orlando, Florida from Thursday, July 30th to Monday, August 1st. I also have prepaid nonrefundable reservations for the same period. My wife's family and others are also committed to nonrefundable tickets to Orlando from North Carolina. My wife's birthday will also be celebrated at this family gathering in Orlando, from July 30th to August 1st.

I greatly appreciate dealing with you in this case, because you seem to lack the bitterness and mean spirit Ms. Evans consistently demonstrated. I would hope that your fresh and unbiased review of this cause, would enable this matter to be resolved without further damage to me or my client, Linda Serbin. This will confirm our lengthy conversations on Thursday and Friday, July 16th and 17th. In particular, I emphasized that there is no reason to feel sympathy for Jon Serbin. Linda Serbin has received a total of $517,500, which is a $22,500 windfall over the figure of $495,000 for which she agreed to seel her house, before any of the funds claimed herein changed hands.

It is apparent that I am intimately aware of the history and material facts here and you have little if any accurate information. From the beginning, because of the attorney client duty owed to Linda Serbin I have not been able to provide any information in order to defend Jon Serbin's claim. However, without violating Ms. Serbin's confidences, while awaiting due process and my right to defend this cause, the following is a summary of the underlying facts from the public records and files, which we briefly discussed and I offer to assist you in considering my request to mediate and for due process, to wit:

1.) FORECLOSURE OF 6475 PINETREE CIRCLE

Please be advised that before I became Linda's counsel [for reasons I may not disclose here], as reflected in the record in First National Bank v. Jon Serbin and Linda Serbin, 11th Cir. Case 92-13147-CA-24, Linda Serbin's house was being foreclosed. Linda's house at 6475 Pinetree Circle, Miami Beach, her home for 21 years, was bayfront property, with 150 feet of

dock and no bridges to the ocean. As reflected in my pleadings, Linda's house was assessed by the City at $522,000 [about 60% of its value on the market]; and the adjacent properties were selling for 1.2 million dollars and 1.495 million dollars. Linda's house was on the bay adjacent to La Gorce Island, where the homes range from 2.5 million to 6.5 million dollars. As reflected in the record, I produced expert testimony that Linda's home would be a "sacrifice sale" at $750,000.

Finally, as reflected in the record, Linda Serbin carried the house for years, paying up to $200,000 from her own funds to maintain the mortgage. As a consequence and to protect her from Jon Serbin's bankruptcy and by express agreement of Jon Serbin all moneys and proceeds of any kind from the house would solely be Linda Serbin's monies.

As reflected in the record in First National Bank v. Serbin, on or about December 7, 1992, before I made an appearance in the case and without discussing it with me, Linda Serbin was intimidated and coerced into signing a Stipulation to Foreclosure, which gave judgment and possession of Linda's house to the Bank forthwith.

Based upon her discussion with the Bank and its attorney, Linda thought she had no choice and had to sign the Stipulation. Ira Gordon, Jon Serbin's attorney, gave Linda Serbin no support or advice. In fact the Stipulation was fine with Gordon and Jon Serbin, and Gordon sent Linda a letter saying she had no choice, but to move out. Gordon also filed a claim in the Court record for five thousand dollars ($5,000) for his representation of Jon Serbin, when Gordon later realized that we had blocked enforcement of the Stipulation and the Bank's foreclosure action and that

Linda's house might be sold for more than the Bank's mortgage.

In First National Bank v. Serbin, the Bank had originally sued for the sum of about $300,000 plus attorney's fees, which was the amount the Bank wanted for its mortgage. However, under the Stipulation and without my intervention on her behalf, Linda Serbin would have received a few days to vacate, but not a dime for her house.

As reflected in the record thereafter, solely through my vocal and tenacious defense of Linda Serbin, the Bank was prevented from enforcing the stipulation and delayed in obtaining a judgment. Even after obtaining a judgment, the Bank was also forced to postpone multiple judicial sales, while Linda and I sought a buyer for Linda's house. See, Exhibit 4 (Response filed in Fla. Supreme Court, at attachments to Response; Motion for Clarification, etc., filed with 17th Circuit grievance committee).

However, after six (6) months of my defense to First National Bank v. Serbin, which included a motion for rehearing and the filing and prosecution of an appeal, which the Bank was greatly concerned with, the trial court finally set the Judicial Sale of Linda's house for June 6, 1993.

As a consequence, as reflected in the record, on or about May 5, 1993, over my reservations and advice to the contrary, Linda Serbin signed a contract with Riteway Realty for an all cash sale of her house to an attorney, Scott Bennett, for the sum of four hundred and ninety five thousand dollars ($495,000), which was supposed to close on June 4, 1993, two (2) days before the scheduled judicial sale of Linda's house.

After attorney Bennett failed to close on June 4th, I negotiated a release of twenty-five thousand

dollars ($25,000) of the $50,000 Riteway/Bennett deposit money as a penalty for Bennett's failure to close. Bennett then transferred his interest in the sales agreement to, Maria Puentes, who was allegedly Bennett's mother. The Riteway/Puentes closing was then reset twice more and finally was scheduled for June 28, 1993.

When Bennett failed to close on June 4, 1993, I has also harassed the Bank's attorney and we eventually agreed to cause the Bank's judicial sale of Linda's house to be postponed yet again to July 8, 1993. Nevertheless, on June 28th the Riteway/Puentes sale failed to close. As reflected in the record, it was apparent that Riteway; attorney Bennett and his alleged mother, Puentes, had no intention to proceed with a legitimate sale, but rather by their subterfuge of a sale and delay, were only attempting to force a firesale of Linda's million dollar house on the courthouse steps for the amount of the Bank's interest, which was about $300,000.

Fortunately, because I had repeatedly stated that I did not consider the Riteway/Bennett/Puentes, sale legitimate, on the weekend of June 28th Linda and I revisited the previous offer by Todd and Madeline Brandon to buy Linda's house for much less than the Riteway/Bennett/Puentes contract. As a consequence, on Saturday, July 6, 1993 two (2) days before the judicial sale of Linda's house, we sold and closed on the sale of the house with the cooperation of the Bank to the Brandons for four hundred and sixty-five thousand, five hundred dollars ($465,500).

2.) DISPUTED RITEWAY ESCROW FUNDS ON 6475 PINETREE CIRCLE

After the firesale to the Brandons, the

undersigned forwarded a demand to Riteway and its two brokers for release of the remaining $25,000 of the original $50,000 escrow deposit. However, instead of responding in Riteway v. Serbin, 11th Cir. they sued Jon Serbin, Linda Serbin and Maria Puentes for the remaining $25,000 plus attorney's fees. The undersigned continued to represent Linda Serbin in Riteway v. Serbin.

At first, this case was a losing proposition all the way for the Serbins. A clause in the contract Linda had signed with Riteway/Bennett/Puentes, provided that the Realtor was entitled to the remaining $25,000 [50%] of the escrow deposit **no matter what happened with the sale to Bennett or his alleged mother, Puentes.**

The first judge on the case, [who was removed for misconduct in unrelated matters about a year later], therefore wanted to give all the money to Riteway immediately and was rude and arrogant to the undersigned, because I even considered defending against Riteway's claim. The first judge, who was formerly a longtime Miami Beach lawyer, seemed to be quite deferential to Riteway's first attorney, Daniel Mones, a long time Miami Beach lawyer. Jon Serbin and Linda Serbin, who were also long time Miami Beach residents, confirmed the foregoing apparent familiarity of the Judge with attorney, Daniel Mones.

Nevertheless, the undersigned gallantly defended against Riteway's claims [and got thoroughly bashed around in the courtroom]. However, in a rear guard defense, the undersigned made a counterclaim against Riteway; a crossclaim against Puentes; initiated a third party action against the Riteway brokers and realtor; and got the case reassigned as a circuit court claim.

Meanwhile, as the case was stalled as much as possible, Riteway's lawyer, Mones, died and his friend, the Judge as noted was suddenly removed from the Miami Beach District Court by the Supreme Court for misconduct. Thereafter a new judge, Scott Silverman, was assigned the case to replace the first judge. The tide thereafter changed dramatically.

Riteway's second attorney, Frank Marks, who worked for attorney Mones, had prepared a grossly defective complaint. He also never failed to offend Judge Silverman at every hearing. Eventually, after a series of hearings and pleadings, which included motions for summary judgment by Riteway and Linda Serbin, Judge Silverman denied Riteway's claim for summary judgment and then in another series of hearings granted our claims for summary judgment against Riteway and the alleged real estate agent. The claims by Marks were so incompetent, that the undersigned would seek attorney's fees against Marks. Additionally, since Puentes admitted the allegations in the initial complaint of Riteway and Puentes failed to defend Linda's crossclaim, Judge Silverman also granted a judgment against Puentes on the crossclaim.

However, Judge Silverman's order allowing summary judgment to be entered against Riteway was complicated by the court allowing Riteway to amend its complaint after several hearings to avoid summary judgment. However, Riteway never amended its complaint. However, thereafter before we could get the matter reset the case was transferred to a third judge and then a fourth judge, Beth Bloom. In a brief hearing on November 8, 1996 Judge Bloom granted final summary judgment against Riteway. Immediately thereafter, the undersigned forwarded a demand to Riteway to release the $25,000 they were

holding.

Meanwhile, the Miami Beach District Court caught on fire and portions of the Serbin case and files were apparently misplaced. Thereafter, after receiving my demand, Marks, Riteway's counsel sought to vacate the summary judgment against Riteway. On June 5, 1997, because of ambiguities in Judge Silverman's original order allowing summary judgment against Riteway, Marks convinced the fourth Judge, Beth Bloom, to vacate the summary judgment against Riteway. Attorney Marks apparently never prepared an order to that effect, because as noted below immediately after the hearing he was fired by Riteway and replaced by attorney Spencer Fox.

After the hearing on June 5, 1997, I met with and agreed to settle with attorney Spencer Fox, who is apparently Riteway's broker's corporate counsel and who was present at the June 5th hearing. Thereafter, after a battle with attorney Marks [who tried to block the settlement], on September 3, 1997, Riteway was permitted to discharge its counsel, Marks, and attorney Spencer Fox appeared and Riteway agreed to pay the remaining $25,000 deposit to Jon and Linda Serbin, in exchange for a dismissal of Riteway and its principals from the case. Under the settlement I obtained, the case would still proceed against Puentes; the agent, Jones, and her attorney, Marks, who had been fired by Riteway.

Linda enthusiastically accepted the settlement. However, despite Linda's repeated efforts, Jon Serbin refused to agree to the settlement and wanted to proceed. Jon Serbin also tried to hire another attorney, Manny Garcia (954) 921-5500. However, Mr. Garcia declined to appear in the case, when I sent him papers allowing him to substitute counsel for the undersigned.

As a result of Jon Serbin's interference with the settlement with Riteway, it was not until nine (9) months later, after a hearing on June 5, 1998, on a Motion by Riteway to enforce the settlement, that Riteway paid $27,000 to Linda Serbin and John Serbin. However, at the hearing over my objections on the record, the Serbins also agreed to release not only Riteway and its principals, but to also to dismiss the crossclaim against Puentes and the third party complaint against the agent, Jones and her attorney. The Serbins also agreed at the hearing on the record to pay my attorney's fees and costs.

3.) JUNE 6TH WRITTEN "STATEMENT" BY LINDA SERBIN

Apparently, on June 6, 1998, which was the day after the foregoing court proceedings in Riteway v. Serbin, [and not in the presence of your investigator], Linda allegedly signed a statement that she "joined" Jon Serbin's complaint in the above referenced case. The undersigned was presented with Serbin's alleged statement on June 10, 1998 at the status conference before the referee. I have not been allowed to defend any complaint by my client, Linda Serbin, before any Committee of the Florida Bar.

DISCUSSION

This is a fee dispute case. Assuming arguendo the legitimacy of Linda's statement, Jon Serbin's intent in this proceeding is to use the Florida Bar to get Linda Serbin [and incidentally himself], five (5) years of free legal services in the foregoing separate, but related cases. Jon Serbin has also never paid attorney Ira Gordon a dime for his representation of Jon Serbin in the above referenced foreclosure case, First National Bank v. Serbin.

Finally, as I related to you on Friday, July 17th, Jon Serbin also wants retribution against the undersigned for many matters, which I am not able to present, because they would violate Linda Serbin's attorney client rights, which have not been not waived, but to the contrary Linda has expressly not released me from.

Without my assistance and if I had never gotten involved with Linda Serbin in 1992, the Stipulation she signed on December 7, 1992 would have resulted in the loss of her house to the Bank and/or her house would have been sold on the Courthouse steps to the Bank for $300,000, the amount of its mortgage. Linda Serbin would have received nothing, but the boot out the door.

If the Riteway/Bennett/Puentes sale had gone forward on June 28, 1993, Linda Serbin would have received a maximum of $495,000, which included the Riteway $50,000 escrow deposit.

Instead, on the back of the undersigned in these cases, Linda Serbin was able to wrench $25,000 from Riteway/Bennett, when they failed to close; $465,500 in the sale from the Brandons; and $27,000 from the litigation from Riteway/Bennett/Puentes. The total recovery on the back of the undersigned has been $517,500, a windfall to Linda Serbin of $22,500 over what she was ever entitled to on the contract she signed from Riteway/Bennett/Puentes.

If I had been allowed due process and allowed to appear before the third Florida Bar Committee to consider this cause on January 20, 1998, the foregoing; my compliance and complete defense of this matter would have been presented. Additionally, up to two (2) members of the committee may have been disqualified, including the chairman, whose misconduct resulted in the hearing not being reset.

The fact is that the first 11th Circuit Grievance Committee was presented with Jon Serbin's claim and my response that Jon Serbin was not my client and the Committee declined to proceed. Elena Evans then transferred this claim to the 17th Circuit Grievance Committee, which also declined to proceed, when informed that Jon Serbin was not my client. The 17th Circuit Committee then transferred the case back to Elena Evans.

After my responses that I would defend this case, but that Jon Serbin was not my client, Ms. Evans sent an investigator to Linda Serbin's apartment trying to get Linda Serbin to sign a complaint. Linda Serbin declined to make any complaint against the undersigned. Your investigator then asked Linda what about attorney's fees and she told him that I represented her as, *a lady in distress*.

Thereafter, as reflected in my response in the Florida Supreme Court, Jon Serbin forged Linda Serbin's signature on a typewritten statement, which was received by the undersigned for the first time only just prior to the January 20, 1997 11th Circuit Committee hearing. Apparently, with all the responses and transfers of this cause, the 11th Circuit Committee then set a hearing for January 20, 1998 and directed the undersigned to appear and defend this cause. In an outrageous disregard for the due process rights of the undersigned and the rules of conduct in the 11th Circuit state and federal courts, Chairman Freshman misled the Committee and Ms. Evans into proceeding.

In sum, if the Florida Bar is now correct in stonewalling this case and the due process rights of the undersigned, the Florida Supreme Court would not have remanded this case upon the pleadings and response before it. The referee is completely out of line

in refusing to allow me to defend my right to due process and right to defend this matter before the 11th Circuit Committee. Please review my responses and my response to Ms. Evans' Notice in the Florida Supreme Court.

Please consider the foregoing and do not feel too sorry for Jon Serbin. There has been no loss here nor wrong of any kind [by the undersigned] to Jon Serbin or Linda Serbin. Additionally, as I have repeatedly indicated there are other unspeakable matters, which would be revealed in a legitimate defense of this cause by Linda Serbin, which Linda Serbin has repeatedly told me she will not allow me to reveal. If Linda Serbin has unequivocally and knowingly waived her attorney client rights, I will be able to defend this cause as is my right.

Finally, if you are still feeling sorry for Jon Serbin, enclosed is my resume and a picture of me with my support staff [I am the one in the middle]. As reflected in the enclosed resume and attachments, I am also a father, husband, and denmaster, whose family and community is greatly appreciative of him and require his services.

Without allowing me due process or my right to defend myself, you would also deprive my family and community. I have served the citizens of Florida; and as a private attorney in an outstanding fashion for twenty-three (23) years. Please consider the foregoing; together with my responses to the Florida Bar and in the Florida Supreme Court; that two (2) other Grievance Committees refused to act on Jon Serbin's complaint; and that I deserve due process here.

This is a fee dispute case. Jon Serbin is suing the Florida Bar to try to get five (5) years of legal services for free. As reflected in the enclosed letter to

John Boggs. I would urge the mediation of this cause or a remand to the Grievance Committee to allow the defense of this cause and due process, which the 11th Circuit Committee was gong to permit on January 20, 1998, before being mislead by its Chairman.

Very truly yours,

CALVIN DAVID FOX, Esq.
Fla. Bar No. 192098

cc: John A. Boggs, Esq.
Director of Lawyer Regulation.

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE
CASE NO. 92,484

THE FLORIDA BAR,
Complainant,

vs.

CALVIN D. FOX,
Respondent.
_____/

Record of proceedings had and testimony taken before Referee Paul Siegel at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130, on Wednesday, June 10, 1998, at a session

commencing at 2:40 p.m., pursuant to notice.

APPEARANCES:

THE FLORIDA BAR
BY: ARLENE SANKEL, ESQ.
Branch Staff Counsel &
GREGG WENZEL, ESQ.
Assistant Staff Counsel
444 Brickell Avenue
Miami, Florida 33131
On Behalf of Complainant

CALVIN D. FOX, ESQ.
PO Box 5286
Fort Lauderdale, Florida 33310
In Pro Se

- - - -

(Thereupon, the following proceedings were had:)

THE REFEREE: This is, at least on my calendar . .it shows as a status conference.

I don't have any particular notice or motion for today, but I know that there is pending before me the notice of non-compliance with the Grievance Committee subpoena.

Let me hear first from the Bar as to where we are and what you would like to accomplish today.

MR. WENZEL: are you familiar with the background of the case?

THE REFEREE: I have read the file.

MR. WENZEL: The Grievance Committee requested from Mr. Fox several documents, that being trust account documents and things of that nature, bank records, relating to his representation of Linda Serbin.

THE REFEREE: Are you referring to the subpoena of September 23 . .as a matter of fact, September 22?

MR. WENZEL: Right.

THE REFEREE: That was to appear before a staff auditor of the Bar on October 13th.

MR. WENZEL: That's correct, Carlos Ruga.

THE REFEREE: Okay.

MR. WENZEL: As a result of not complying with that subpoena, a notice of hearing was placed before the Committee as to why he didn't comply with that particular subpoena.

Mr. Fox sent in some information regarding that, that he would not be able to attend that particular

hearing, which was set for January 20th, because he would have a conflict out of state in another jurisdiction.

There was some communications between Mr. Fox and the Committee Chair, Mr. Freshman, where Mr. Freshman tried to make contact with Mr. Fox and required that Mr. Fox present additional information as to why he could not attend this particular meeting.

There was no additional information provided.

The hearing was held on January 20th. Mr. Fox was not present.

As a result of that, that's why we are particularly here, for non-compliance with the Grievance Committee's request to submit documentation as to the trust account and bank records, as to his representation of Ms. Serbin.

After Mr. Fox had sent a letter to the Committee saying, I was not at your meeting, however, . .

That he would agree to give everything as long as he got until February 12th.

Mr. Fox still hasn't given us the information he promised after he missed this particular meeting.

That's why we are here, because Mr. Fox requested a hearing in front of Your Honor as to why he doesn't have to give these particular records, the bank records.

That's where we stand.

THE REFEREE: Yes, sir?

MR. FOX: Mr. Fox did not request this hearing, Your Honor.

Justice Kogan remanded it to you, based upon

their notice of non-compliance and my verified response, which they have never responded to.

Another correction is that Linda Serbin is not the complaining witness. It is Jon Serbin.

They gave me the materials a few days before the hearing scheduled by the Committee, at which the Committee said I could comply.

They gave me a document. I looked through the documents and I found one-page typed document with a signature purporting to be that of Linda Serbin.

As I explained in my verified response, it is not her signature. The only complaining witness here is Jon Serbin.

Jon Serbin was not my client when the funds for the house were received. That is abundantly clear as reflected in my verified response and exhibits.

I think what happened here was that Mr. Freshman, who I also . .I believe he is the guy . .I have asked my former partner to verify it, that Mr. Freshman is who I sued in another case. .has misled the Bar and the Committee.

He did not make any effort whatsoever to obtain additional information.

I spent a lot of money on my voice mail system.

He sent me a letter which I attached to my response, in which he says, I chose not to respond to your voice mail system.

THE REFEREE: Let me stop you, Mr. Fox.

I think any of the proceedings before the Grievance Committee are almost moot at this point.

I don't rely, really, and probably will not rely in

anything I do on what the Grievance Committee did.

I think what we have is a subpoena dated September 22, 1997 for you to appear with certain trust accounts records before an auditor of the Bar.

I fully understand your position that the Complainant before the Bar is Jon Serbin, rather than Linda Serbin. I understand your position that Jon Serbin has no right to the money and further, that he was not your client.

I have read all of that.

Even assuming that all of that is true, I don't know that it makes any difference at all, because I think if the Bar has any reason at all from anybody's complaint to suspect that a lawyer may not be in compliance with the trust accounting regulations of the Code of Professional Responsibility, I don't see any reason why the Bar cannot subpoena a lawyer's trust account records.

I don't think the Bar has to have probable cause, clear and convincing evidence. I don't think they need very much at all to go on in order to issue a subpoena.

It seems under the rules as written by the Supreme Court that lawyers do not have a whole lot of rights in this area. They are required to comply with certain specific regulations in connection with their trust accounts and the Bar is given the right to subpoena a lawyer's trust account records.

As I say, I don't think they need probable cause for a complaint, but that is something that you can address.

MR. FOX: Mrs. Serbin confirmed it was not her

signature, by the way.

THE REFEREE: Again, the Bar received information that you received a trust account deposit of some $25,000.

Mr. Serbin says that his wife didn't get the money.

As I say, I don't know that it matters whether he was your client . .

MR. FOX: it matters greatly, Your Honor.

THE REFEREE: Tell me why.

MR. FOX: if you read my responses, every time they sent me a subpoena. I responded by saying,Please, I need additional time.

Also, I started to them that Jon Serbin was not my client at that time and that in order to respond to this matter, Linda Serbin must waive attorney-client privilege matters.

She has not. She refuses to. She told the investigator she would not waive it. She told their investigator that in fact she does not wish to make a complaint. Everything is fine with her.

I think that I cannot be blackmailed by Mr. Jon Serbin into disclosing Linda Serbin's client-attorney matters in order to defend this case.

I am put on the horns of a dilemma by the Bar. In order to defend this case, I must disclose attorney-client information matters.

The client has declined to allow me to do that, repeatedly.

I am on the horns of a dilemma, Your Honor.

I think the issue here is . .and I think this is why

Justice Kogan remanded it.

The issues drawn by the documents filed before the Court . .and that is that they said I didn't comply by showing up at the committee hearing.

THE REFEREE: it's not the committee hearing.

MR. FOX: That's why they said in their documents in the Supreme Court.

THE REFEREE: I think it is your failure to appear because the auditor on October 13, 2997.

MR. FOX: I did appear with a response, that I could file.

I appeared with a response each time they subpoenaed me.

It was fully my intent to appear before the Committee because I hoped Linda Serbin would be there. She didn't go. They wanted her there, but she declined to appear.

MR. WENZEL: Actually, they had her on the telephone and they took a statement from Mrs. Serbin via telephone.

MR. FOX: There is nothing in the record about that.

MR. WENZEL: I was informed at the last Grievance Committee meeting by Mr. Freshman that she was on the telephone and there is a transcript of those proceedings.

MR. FOX: There is nothing in the records that I have been provided that was filed in the Supreme Court of Florida that mentions that.

THE REFEREE: Let me inquire further of Mr. Fox.

I have a little problem understanding how the records of deposits into your trust account and disbursements from your trust account are going to impinge on Mrs. Serbin's right to assert attorney-client privilege.

In other words, right now, I think what you were subpoenaed to bring were certain financial records, which have never been brought.

How would the production of those financial records impinge on the attorney-client privilege of Mrs. Serbin?

MR. FOX: Are we proceeding with an evidentiary hearing, Judge?

THE REFEREE: You have raised the issue. That's another good issue.

We are noticed for a status conference today.

MR. FOX: I understand.

THE REFEREE: I have to finish this off. If you want to contend that this is not a final hearing and it's not an evidentiary hearing, that's fine. I understand that position, if that is what you want to assert, and we will set a further hearing if we need one.

MR. FOX: Your Honor, in order to disclose a response to that question, I would have to explain the entire transaction between Mrs. Serbin and myself.

I have repeatedly told the Bar that I would like to cooperate, but she doesn't want to waive her attorney-client privilege. I repeatedly told them that.

I think that is wy the Committee said, Okay, Mr. Fox, come on down and let's talk about it.

MR. WENZEL: Can I interject?

THE REFEREE: Hold on.

Mr. FOX: That in fact is what I intended to do at the hearing scheduled for the 20th.

They just like ignored the fact that I was called to a trial in Washington State.

THE REFEREE: We are beyond that right now.

You are suggesting to me that you can't produce the trust account records because for you to do so would violate the attorney-client privilege of Mrs. Serbin.

I think I have to go beyond that and either in the presence of the Bar's lawyers or outside the presence of the Bar's lawyers, I have to listen to your reasons, either today or at some other time, and make a determination as to whether your production of the records would violate attorney-client privilege.

If we have to go that route, it can be done with a sealed transcript that requires a court order to be reviewed by anybody other than the Supreme Court or some other Judge.

But I don't think that I can simply accept the assertion that attorney-client privilege excuses you from complying with the subpoena, without going further and making a detailed inquiry as to exactly why.

MR. FOX: Your Honor, I think that's why the Committee set a meeting.

I was hoping that Linda would be there and I was hoping that I would be able to do what the Court is suggesting, and that is to disclose these matters in camera somehow.

I have to tell you that even as late as last week, I spoke to her face to face and I said, Look, this has to be

resolved.

She was loathe to have this matter opened up in the public – and these records are public records, unfortunately.

THE REFEREE: I don't know that they are necessarily public records.

If I conduct an in camera hearing . . first, let me find out if Bar Counsel have any problem with my conducting an in camera hearing with a sealed record in order to hear Mr. Fox's reasons why producing these accounting records would impinge on the right to attorney-client privilege of his client.

MR. WENZEL: Judge, we have a sworn affidavit from Linda Serbin as of June 6th, about four days ago, where she says in her affidavit. .

MR. FOX: May I see the document that he is reading to you?

MR. WENZEL: (Handing).

MR. FOX: Is that the only one?

MR. WENZEL: Yes.

She says, essentially, that Mr. Fox is holding monies in an escrow account and that Mr. Fox has been holding that money for a period of five years.

At this time, I have requested these funds and he is unwilling to release them. I have never given Mr. Fox consent or permission to keep these funds. This money was a deposit on a real estate matter that didn't materialize.

I don't know what she said when Mr. Fox said he saw her last week, but as of June 6th it is clear from my conversation, as well as the affidavit, that Linda Serbin's position is that she wants the money. He has

the money.

If there was any type of privilege, it's waived at this point.

She clearly wants the money that he is holding.

THE REFEREE: Please respond to my question, and that is whether the Bar would have an objection to the Court conducting an in camera proceeding with a sealed transcript on Mr. Fox's claim of attorney-client privilege on behalf of his client.

MS. SANKEL: Your Honor, Rule 4-1.6 of the Rules of Professional Conduct allow a lawyer to breach attorney-client privilege communications to the extent that such a breach is necessary in order to defend against a grievance.

So there is authority under the rules for Mr. Fox to provide us with that information.

I'm not sure if that answers your question.

My second concern would be that we still have the issue of the underlying complaint.

Assuming for a moment that you were to have a closed proceeding and that the Bar was not privy to the information that Mr. Fox were to relate to you, we would still have the issue as to is the money secure, because we have a two-pronged situation here.

We have the non-compliance matter and we still have the underlying complaint, which we need to address.

That is the dilemma that we face.

I think that if we look to the Rule, 4-1.6(e) in particular, it states:

When disclosure is mandated or

> permitted, the lawyer shall disclose no more information than what is required to meet the requirement or accomplish the purpose of the rule.

Subsection (c) of that same rule provides:

> A lawyer may reveal such information to the extent that he or she reasonably believes necessary to comply with the Rules of Professional Conduct

THE REFEREE: Let me catch up with you.

MS. SANKEL: It's Rule 4-1.6. It speaks to confidentiality of information.

THE REFEREE: These rules are very difficult to work with.

Let me read that.

(Examining).

Mr. Fox, the Bar, I gather, is suggesting that you can't assert attorney-client privilege in this setting, which is what the rule would seem to indicate.

MR. FOX: Judge, if I may. I told the Bar for years about this. Linda didn't make the complaint.

Magically, they come up with a phony statement by her that Jon Serbin generated in January, just before the January hearing.

I investigated it. Ms. Serbin said it wasn't her signature.

Now today, for the first time, at ten minutes after 3:00, they come up with another affidavit of Linda Serbin.

My entire point throughout these proceedings

has been that Linda Serbin is the client. The money is Linda Serbin's. There is no question about it. Jon Serbin doesn't even dispute that.

In fact, she is not complaining about anything. She doesn't want this proceeding. She has refused to cooperate with them.

they are springing on me today an affidavit from her. I don't know who this guy, Gil, is, the notary. He is probably somebody in her husband's office.

MS. SANKEL: He is The Florida Bar's Staff Investigator and a former FBI Agent.

MR. FOX: whatever his former life was. He is the guy that notarized it?

MS. SANKEL: Yes.

MR. WENZEL: Arthur Gil, yes.

MR. FOX: She told me last Friday, which is two days after that document, that . .well, I guess Friday was the 5th. This was a Saturday.

MR. WENZEL: It was the 6th.

MR. FOX: She told me on Friday, and I brought this up again, that she . . and this was a face to face meeting . . that she did not want to proceed with this matter, that she had no complaint against me in this matter and that she had no problems in this matter.

Now they come up with this thing on Saturday, the next day.

There is a host of things going on here and I really . .I have been very anxious to explain this situation myself.

I just attended a seminar a couple of months ago and one of the ethics portions of it was about attorney-

client privilege. It is one of the most sacred things.

in this case, my disclosure would be devastating to Ms. Serbin, to her family and to Jon Serbin.

Socially and otherwise, she is an extremely proud woman. She is an extremely socially well known woman in her community.

MR. WENZEL: Judge, as far as a letter that Mr. Fox wrote to the Bar on January 17th, three days before the actual hearing – he writes:

> I intend to produce the documents requested at the presently scheduled hearing, but I am unable to do so until my return from a specially set trial in Washington. I will produce a written submission with the necessary documentation upon my return from Washington, but in no event later than February 15, 1998, for your review and analysis.

It appears in that letter that he is not standing on attorney-client privilege, that he is willing to meet with the Bar and to produce these documents.

MR. FOX: This was . .and I think if you read in the beginning of the letter, this was because you presented me a few days earlier with a typed statement from Linda Serbin that she adopted Jon Serbin's complaint.

I just glanced at it. I assumed that it was legitimate. Then when I looked at it later, it turned out it wasn't her signature. She said that she never signed it.

That's why I issued that letter, because if Linda Serbin wants me to be able to defend this, she has to let

me go. I am still her attorney in a Circuit matter pending on Miami Beach.

MR. WENZEL: Also, just making a note for the record, Mr. Fox did present Ms. Serbin with a typed letter where it pretty much explains, I am not with my husband. Mr. Fox is legitimate in his tack or representation of my interests.

That letter was never signed by Linda Serbin.

THE REFEREE: These are a lot of side issues.

I did ask you a question, Mr. Fox, and that is your response to the Bar's contention that there does not appear to be any attorney-client privilege that would enable you to give as a reason for not complying with a subpoena to produce your trust account records.

MR. FOX: in June of 1998, Your Honor, I don't think the Committee, if they allowed me to appear before them, would have referred this matter any further.

The Committee voted to refer this matter to the Supreme Court and I think if I had my due process rights to appear . .

This is, of course, a very serious matter.

MS. SANKEL: Your Honor . .

MR. FOX: Who is this lady? I'm not sure who she is.

MS. SANKEL: I am Arlene Sankel, Branch Staff Counsel of the Miami Office.

MR. FOX: The Committee voted to refer this matter and I think I am entitled to appear. They had all the subpoenas and everything.

THE REFEREE: You are beyond that now. You

are in front of me.

I have to resolve the matter.

This is set as a status conference. If you want to do the hearing now, I will be glad to do it now. If you want to come back in a couple of weeks and have a final hearing on it, come back in a couple of weeks.

I am not going to let the matter sit. I can't do that.

There is a specific provision, I just noticed today, in the rule, which says that a Referee shall hear the issue of non-comliance and issue findings thereon within thirty days of the request for issuance of the notice of non-compliance.

MS. SANKEL: Your Honor, I don't think that applies.

I think you are under the one hundred eighty day rule.

That is in the event of a notice of non-compliance issued directly by a Referee at the Referee level.

You have one hundred eighty days from, I think it was, March 25th. I'm not sure.

THE REFEREE: Well, we are rapidly getting there.

what is your preference, Mr. Fox? Would you like to do it today or would you like me to set a future hearing?

MR. FOX: I would like a copy of the document that he just read from.

THE REFEREE: They will give you that today. They can make a photocopy here.

MR. FOX: I would like them to respond to my

response and the matters raised in the response. I think that is relevant.

I think I am entitled to due process. I have been denied due process on a very serious matter.

THE REFEREE: This is a status conference. It's not scheduled as a trial, so to speak.

So if you would like a trial date, pull out your calendar and we will get a trial date.

MR. FOX: All right.

THE REFEREE: Do you have your calendar with you?

MR. FOX: I sure don't.

I came down for a status conference. I did not expect to have a trial.

I just thought the Bar had noticed this to see where we were.

THE REFEREE: That's what we are doing, seeing where we are.

MR. FOX: We are halfway through the one hundred eighty days, I believe.

THE REFEREE: About that, yes.

MR. FOX: I didn't get your name either, sir.

MR. WENZEL: Gregg Wenzel.

MR. FOX: You sent the notice?

MR. WENZEL: Yes.

MR. FOX: Perhaps Mr. Wenzel and I can discuss getting this thing ready for trial and give the Court a proposed date or dates.

THE REFEREE: Here is where I am. I have one more week of non-jury trials, the 29th of June, before I

go back to the Criminal Division and start trying criminal cases, which is where you found me the last time we met.

It is more difficult for me to make hearing time available to you when I am in the Criminal Division.

The non-jury calendar in three weeks, for me is the most convenient time, so I would like to conduct a final hearing on this during the week of June 29th.

MR. FOX: I am not going to be available during that period of time, Judge. I am going to be out of the jurisdiction for that ten day period commencing the end of June through July 10th.

THE REFEREE: When in June are you leaving, Mr. Fox?

MR. FOX: Right at the end of June, Your Honor. It's something that I arranged a year ago with my family.

THE REFEREE: You have a vacation. When do you leave?

MR. FOX: The week preceding July 4th.

THE REFEREE: Do you want to look at a calendar?

MR. FOX: Yes.

THE REFEREE: Look at the week of June 29th (handing calendar) and tell me whether you will be out of town that entire week.

MR. FOX: Yes, that is the week that we leave, probably that preceding Saturday. We are gone until about the 10th of July.

It doesn't just involve me. It involves about fifteen people.

Judge, I have to tell you that I prefer the Criminal Court building for this type of proceeding, to the extent that it is possible.

It is a less open and public area. I am beyond embarrassed by this type of matter, professionally.

I would prefer to have it in the Criminal Court building on any given afternoon in July or August, after July 10th.

THE REFEREE: Let's do it July 24th, on Friday afternoon at 1:30.

Let me check first.

(Thereupon, there was an interruption in the proceedings.)

MR. FOX: This is a Hurricane Andrew matter, Judge. It's still with us.

THE REFEREE: I'm still hearing Hurricane Andrew cases.

MR. FOX: This is another one.

(Thereupon, there was an interruption in the proceedings.)

THE REFEREE: is there anything else anybody would like to discuss, since this is a status conference?

I guess Bar Counsel can send out a notice of hearing.

MS. SANKEL: Yes, Judge.

THE REFEREE: I guess you can call it a final hearing.

If anybody wants subpoenas, I am the one who issues the subpoenas. So get your requests in early.

MR. WENZEL: I am handing Mr. Fox affidavits,

one of Linda Serbin and one of Jon Serbin.

MR. FOX: Dated June 6th, each one.

THE REFEREE: If any witness is unavailable or out of the country, take depositions and have the depositions available for July 24th at 1:30.

MR. FOX: Ms. Sankel, may I communicate with Mr. Wenzel?

MS. SANKEL: Please do.

MR. FOX: Do you have a direct line?

MR. WENZEL: It's 377-4445.

MR. FOX: All right.

MR. WENZEL: Do you have a phone number?

MR. FOX: You have the 839 number, which is in the Bar Journal.

I can give you another number. Area Code 954-294-9270.

MR. WENZEL: Thank you.

MR. FOX: Is that it, Judge?

THE REFEREE: I guess that's it.

MR. FOX: Thank you, Your Honor.

MS. SANKEL: Thank you, Judge.

(Thereupon, the proceedings were concluded at 3:25 p.m.)

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IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE
FLORIDA BAR CASE NO. 97-70,300(11I)

THE FLORIDA BAR,
Complainant,

VS.

CALVIN D. FOX,
Respondent,
_____/

Proceedings had before Judge Paul Siegel, sitting as Referee, at 1351 Northwest 12th Street, Miami, Florida, on August 14, 1998, commencing at 2:05 o'clock p.m., pursuant to Notice.

APPEARANCES: THE FLORIDA BAR
444 Brickell Avenue
Miami, Florida 33131
By: ARLENE SANKEL, ESQ.
Branch Staff Counsel
And
GREG WENZEL, ESQ.
Assistant Staff Counsel
On Behalf of the Florid Bar

CALVIN D. FOX, ESQ.
Pro Se

THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

MR. FOX: Judge, we have an agreement tentatively. Mr. Wenzel and I have met and discussed.

Basically, what we would propose to the Court is that we would admit documents which he and I have agreed on the transcript of January 20th, I think it was, Greg?

MR. WENZEL: Right. That is the Grievance Committee.

Essentially, Your Honor, in this case on August 12th, I received that transcript in which Mrs. Serbin testified. I was not aware of that until the 12th.

Also, recently a status conference, if you would call it, they produced an affidavit by Mrs. Serbin

I think her affidavit was June 6th . .

MR. WENZEL: Correct.

MR. FOX: -- '98.

What we have tentatively worked out is. .and quite frankly, Your Honor, there's no . .I don't thing there's any question about it. I would admit noncompliance with production of the records, which is what this case has been sent to the Court for.

MR. WENZEL: Specifically, that being trust account records from May, 1993.

MR. FOX: The subject matter of the two subpoenas.

May records, May, '93 to date.

The reasons for that, Your Honor, are in the record, but I would agree to produce those records by August 28th.

When those documents that I have are produced, I guess the Court or the Bar would dismiss

this case that the case has been resolved or they would file a dismissal or something like that?

MR. WENZEL: Well, we wouldn't agree to that, but what we would agree to is not to pursue the noncompliance of the subpoena or any type of discipline as a result of that like a suspension because you didn't comply with the subpoena originally.

MR. FOX: Right, but the Supreme Court needs to know what's happening in the case.

MR. WENZEL: What we would like is that he have a date and we would like for you to determine if the date could be a little . . we would request that date to be less than the 28th, perhaps by next Friday that he produce these records and if he doesn't , that's he immediately suspended until he does produce those records.

THE REFEREE: Well, you folks either have an agreement or you don't

MR. WENZELL: That's correct, and I . .

THE REFEREE: It sounds like thus far, you don't have any agreement.

MR. FOX: The only agreement. .

THE REFEREE: You're close, but you're not there yet.

MR. FOX: The only thing we didn't agree to, Judge, is a few minutes ago, Mr. Wenzel suggested this Friday and I suggested the 28th.

Now, the reason as far as the 28th goes, I have a mass in my abdomen which they are going to do a study of on Monday and decide whether to take it out and I think . . you know, I need a little bit of time to recover from that.

I would like produce the records because quite frankly, I didn't produce the records because I

was not present at the hearing on the 20th because I thought Mrs. Serbin was not making a complaint against me and now she . .

THE REFEREE: Well, let me make a suggestion then since I have listened to the two of you.

Let me suggest if it is acceptable to both sided that if on Monday, Mr. Fox, you are scheduled for surgery immediately, that the date of compliance with the subpoena will be August 28th, and if you find out that you are not going to be scheduled immediately for surgery, then the date of compliance will be the 21st.

Is that acceptable to you?

MR. WENZEL: That's acceptable.

MR. FOX: I think I could do that, Judge. If they say you know they are not going to do the surgery next week, that would be . .

THE REFEREE: Yes, I can understand. Certainly, if you're scheduled for surgery, that's not an easy thing to go through.

MR. FOX: Yes. I've been fighting this thing since February.

MR. WENZEL: The only thing, though, is that if he is scheduled for surgery, he goes through surgery, and the 28th comes around and he has not hasn't produced those documents that he says he is going to produce, that an immediate suspension does take effect and that he understands that that's what's going to happen and he agrees to it.

MS. SANKEL: WE are trying to avoid the necessity of reappearing before you, Your Honor, if Mr. Fox does not produce the records as promised.

THE REFEREE: Yes.

Mr. Fox, obviously, if you're going to comply with the subpoena, you need to gather the records this weekend if they are not already gathered and put them

in an envelope and have somebody in your office get ready to send them.

So I guess you need tell me whether you agree with the terms requested by Bar Counsel.

MR. FOX: I agree, Your Honor, to produce the records I have. That's correct.

THE REFEREE: Well, if you don't have records, of course, we have to start the process all over again.

Well, no, we don't. I mean, you have an obligation to produce the records.

MR. FOX: Right.

THE REFEREE: You can't say I am going to produce records if I have them. You have an absolute obligation under the Bar rules to maintain those records.

So if you don't have them, I would suspect that the Supreme Court will suspend you.

MR. FOX: I understand that, Judge, and in the that . .

You're going to make a determination as to compliance at some point, I guess, then?

MR. WENZEL: Judge, that would be our agreement, that Mr. Fox . .

THE REFEREE: Well, in order to conclude this proceeding, if Mr. Fox has produced all appropriate records of his trust account, then I suppose I ought to inform the Supreme Court of that fact.

MS. SANKEL: His Honor would need to do that, yes.

THE REFEREE: Yes, and I'll ask Bar counsel, whatever happens, to prepare an appropriate order for my signature which you will send to me after you shot it to Mr. Fox and if he has any disagreement with the form of order, of course, he'll let me know.

MS. SANKEL: Your Honor, if you don't mind, I just wanted to bring up something that I think is a potential issue.

THE REFEREE: Okay

MS. SANKEL: I see partial production of records down the road.

You know, we are here and we have our witnesses here. We really would like to resolve this matter without putting anybody on.

It is what it is, but if we are going to end up two weeks from now with partial production of records or a response from Mr. Fox saying I don't have records to produce to you, we are going to end up back here again. So . .

THE REFEREE: Well, I have already made it perfectly plain I thing to Mr. Fox that as a member of the Florida Bar, he has a responsibility to maintain trust accounting records in accordance with the rule.

If he does not have those records and is not able to produce them because he doesn't have them, then I suppose I have no choice except to find that he has not complied with the subpoena.

Unless he can demonstrate clear or good cause, which he ought to tell me about now, I'll have to make the appropriate findings.

MR. FOX: and a recommendation to the Supreme Court. Is that correct, Judge?

THE REFEREE: I don't know . .I just read the rule. I don't need to make a recommendation. I'm just a fact finder.

MR. FOX: Okay

THE REFEREE: But it's clear what the Supreme Court . .at least, it seem clear what the Supreme Court is likely to do under the circumstances.

MR. FOX: I'm just trying to . . this case

because of the revelations that I have received regarding Mrs. Serbin on 8-12 and at the status conference hearing, I thing it was 6-12 or something like that . .basically, I'm trying to resolve this.

At this point, what I would have preferred is that this case now be sent back to the Grievance Committee, I produce the records, and they proceed on the substantive matter rather than horsing around with this procedural issue. That's what I'm trying to do is just okay, let's just clean this thing out, clean it up. I will agreed with Mr. Wenzel to produce the records.

MR. WENZEL: judge, there's only a problem here because it does seem little too loose from our perspective as far as coming back for a good cause hearing and whatnot in the future.

If we can organize an agreement that Mr. Fox would agree that if he does not produce those records on that date, that he will agree that a as a condition of non-production of those documents, that he will consent to be suspended indefinitely until he does produce them.

THE REFEREE: Well, we're here right now.

Let me read Rule 5-1.2 on trust accounting records and procedur4s, which says:

> Note: Sub-section two. Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a Grievance Committee or a Referee shall first find that no good cause exists for failure to comply.

I think today is the day for any showing a good cause. So if you have any good cause for failure to comply with the subpoena, Mr. Fox, you need to tell me what it is right now.

MR. FOX: I agreed to comply with it in front

of . .if you read the transcript of January 20, 1998, I sent the committee a letter agreeing to comply after I received a document which appeared to be a complaint by Mrs. Serbin.

I sent them a letter and then I went to my trial in Washington state and agreed to comply.

THE REFEREE: Okay. Mr. Fox, do you have any good cause for failing to comply with the subpoena that you want to present to me right now?

I mean, not failing to comply in the past. Do you have to comply with the subpoena by the time agreed upon a few moments ago, either August 21st, 1998 or August 28th, 1998?

MR. FOX: I will produce the documents which I have relative to the subpoena, Judge.

THE REFEREE: Well, Mr. Fox, it sounds like a bit of a hedge . .

MR. FOX: Judge, if there is a period at the end of a sentence that I'm missing somewhere, you know -

THE REFEREE: No. What you said was, I will produce the records that I have.

MR. FOX: I will produce the financial records with regard to Serbin, and I'll produce the financial records with regard to those transactions since May of '93.

THE REFEREE: Well, whatever the subpoena calls for . .

MR. FOX: Right.

THE REFEREE: . . you have to produce.

MR. WENZEL: It's just that we are concerned that we want everything that has been placed in the subpoena that he agrees to produce.

THE REFEREE: He has an obligation to produce those records, whatever has been subpoenaed;

not what you have and say, I have, but the records which are described in the subpoena must be produced.

MR. FOX: I told Mr. Wenzel that.

THE REFEREE: Okay.

MR. FOX: He showed me that transcript of January 20th two days ago and I said, There's no point in going through with this now that Mrs. Serbin has testified against me and I'm aware of it.

THE REFEREE: Okay.

MR. FOX: I was not aware that she had made a complaint before that time, Judge.

THE REFEREE: Okay.

MR. FOX: Specifically, she had denied making the complaint before.

THE REFEREE: all right. So I think we have a clear record.

Mr. Fox, by August 21st or August 28th, depending upon whether or not he is scheduled next week for surgery, will produce all records which are called for by the subpoena.

If Mr. Fox does not comply with the subpoena . .I have not heard any good cause today for a failure to comply . . and I will file my report that may be drafted by Bar counsel, which is called for under the rule that I just quoted.

MS. SANKEL: Your Honor, when we submit a proposed report of Referee, may we include in there that you recommend that Mr. Fox remain suspended if he fails to produce those records until such time as he then complies? Because I believe that the Supreme Court will be looking to you for a recommendation along those lines.

THE REFEREE: Well . .

MR. FOX: I think that's up to the Supreme Court.

MS. SANKEL: It's up to them whether or not to come with that recommendation . .

THE REFEREE: Well, I don't find the Supreme Court asking me to make a recommendation on suspension.

My job , as I see it under the rule that I have just read, is to make a finding of fact and it is up to the Supreme Court after hearing whatever the Bar has to say and whatever Mr. Fox has to say to make a decision whether or not he will be suspended.

If they ask me for a recommendation, I certainly will make my recommendation, but I don't find that the rule on its face calls for my recommendation.

MS. SANKEL: Your Honor, if I can just have a moment. I just want to review the order.

THE REFEREE: Oh, okay. Sure. Check that.

MS. SANKEL: Your Honor, if I may, there is an order from the Supreme Court dated March 25, 1998 whereby they send this matter over to Chief Justice Farina for assignment to a Referee.
Within that order, it states:

> The Referee shall hear, conduct, try, and determine the matters presented and thereafter shall submit findings of fact and recommendations to the Supreme Court of Florida as provided in Rule 3-7.6(k).

THE REFEREE: All right. So if I'm called upon to make a recommendation, then I'll make a recommendation to the Court.

MS. SANKEL: So you don't want that in our proposed order? I just want to make sure I understand.

THE REFEREE: No. If the Court has asked me to make a recommendation in that order, then you

draft the order with the recommendation that you consider I should make and Mr. Fox will comment on it.

MS. SANKEL: Okay. Thank you.

THE REFEREE: Okay. Is there anything further, folks?

MS. SANKEL: One thing, Your Honor. I just want to make sure that I touch upon something Mr. Fox mentioned initially so that there is no misunderstanding.

I don't want him to be under the impression that even if he produces those records, that this matter, the initial underlying complaint that led us to be here today, will be dismissed because it may or may not depending upon what those records show, and he did sort of say something along those lines.

Since I haven't had any direct communications with him, I didn't want there to be any misunderstanding. The underlying complaint remains pending.

THE REFEREE: Well, I gather that Mrs. Serbin claims, sort of claims, her husband claims . .

I'm not sure that you owe Mrs. Serbin $25,000 and at some point in the future, I presume that that question will be determined by somebody.

MR. FOX: We are just here on noncompliance. That's all, Judge.

THE REFEREE: That's correct.

MR. FOX: That's it.

THE REFEREE: That's correct.

MR. FOX: Not the substance of the underlying complaint.

THE REFEREE: That's correct.

Okay, folks.

MS. SANKEL: Thank you for your time.

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

In Re: A Disciplinary matter conducted under authority of the Rules Regulating The Florida Bar

The Florida Bar File
No. 97-70,300(11I)

Notice of Hearing Before a Grievance Committee

TO: Calvin D. Fox
Tutor-Time, Ste-450
One Park Place
Boca Raton, FL
& PO Box 5286
Fort Lauderdale, FL 33310

Jon Serbin
9241 Collins Ave
Apartment 7
Surfside, FL 33154

DATE: January 20, 1998
TIME: 5:30 p.m.
PLACE: Office of The Florida Bar, 444 Brickell Avenue, Suite M-100, Rivergate Plaza, Miami, FL
SUBJECT: Complaint of Jon Serbin against Calvin D. Fox

Possible violation of Rules 3-4.8, 3-7.11(d)(f) of the Rules of discipline, Rule 4-8.4(g) of the Rules o Professional Conduct and Rule 5-1.2(f) of the Rules Regulating Trust Accounts. . . .

IN THE SUPREME COURT OF FLORIDA
(Before a grievance Committee)

In Re: A disciplinary matter conducted under authority of the Rules Regulating The Florida Bar.

The Florida Bar File
No. 97-70,300(11I)

Notice of Hearing Before a Grievance Committee

TO: Calvin David Fox
PO Box 5286
Fort Lauderdale, FL 33310-5286

Jon & Linda Serbin
11111 Biscayne Blvd
Apt 401
Miami, FL 33181-3404

DATE: Tuesday, February 29, 2000
TIME: 5:30 p.m.
PLACE: Office of The Florida Bar, 444 Brickell Avenue, Suite M-100, Rivergate Plaza, Miami, Florida.

SUBJECT: Complaint of Jon Serbin against Calvin David Fox

Possible violation of rules 4-1.15, 4-1.4, 4-8.4 of the Rules of Professional Conduct and Rule 5-1.2 of the Rules Regulating Trust Accounts.

LAW OFFICES OF CALVIN DAVID FOX
July 24, 1998

John A. Boggs
Director of Lawyer Regulation
650 Apalachee Parkway
Tallahassee, Florida 32399

Complaint of Jon Serbin
Fla.Bar Case 97,70,300(11I)
Fla.S.Ct. Case 92,484
Gregg Wenzel, Asst.Bar Counsel

Dear Mr. Boggs,
Enclosed is another copy of a letter to you dated March 23, 1998, another copy of my March 15, 1998 response and exhibits in the Florida Supreme Court in the above referenced case; a letter dated July 20, 1998 to Gregg Wenzel; and my resume and a photo of me with my support staff. I am not aware that you ever responded to my March 23rd letter.

I met you at a seminar on February 17, 1998 and I was quite pleasantly surprised. You are much younger, involved and energetic than I anticipated; and you seem to be genuinely interested in the quality of the work that the Florida Bar is supposed to do. I described you as proactive to Greg Wenzel, who was just recently assigned this matter.

Posture of Case in Florida Supreme Court
As reflected in my multiple responses attached to my Florida Supreme Court filing, the complaining witness from September 4, 1996 to the filing of my Supreme Court response, has always been Jon Serbin, who at all

times material to this complaint was not my client and whose interests are grossly opposed to me personally and to my client, who was his estranged wife. In order to defend this complaint, the Florida Bar through its former counsel, Elena Evans, has repeatedly tried to force me to violate the confidences and agreements with my client, Linda Serbin, and to force Linda Serbin to make a complaint against me, which she has steadfastly refused to do.

I presented the foregoing dilemma in my first response to Ms. Evans. The first Miami grievance committee received my response and declined to act against the undersigned.

Evans, not to be deterred especially when pursuing a complaint against the undersigned, then forwarded the Jon Serbin complaint to the 17th Circuit Grievance Committee, who also issued a subpoena. I respond in a second response in the same fashion stating the foregoing to the 17th Circuit Grievance Committee. After receiving my response, the 17th Circuit Committee also refused to act. They also sent the file back to Ms. Evans.

Ms. Evans who was not to be deterred, then sent out your investigator to Linda Serbin's apartment, who parked himself there and tried to get Ms. Serbin to sign a statement. Ms. Serbin said that she did not want to make any claim against me and she refused to sign a complaint against the undersigned.

Ms. Evans then prevailed upon a third grievance committee to issue an 11th Circuit subpoena. The undersigned filed a third response stating his desire to

cooperate but reiterating the foregoing dilemma. The 11th Circuit Committee then set a hearing for January 20, 1998. The undersigned was invited to appear and to defend this matter.

As reflected in my response in the Florida Supreme Court, while all of the foregoing came to pass, and unknown to the undersigned on or about May 26, 1997 Jon Serbin took things into his own hands and without her permission or agreement, forged Linda Serbin's signature on a single page typewritten page, purporting to be a complaint against the undersigned. Ms. Serbin reviewed this document in the presence of the undersigned and indicated that the signature on the document was indeed, not hers.

As reflected in my response in the Florida Supreme Court I was precluded by a previously scheduled trial in Seattle, Washington, from attending the January 20th Grievance Committee hearing to defend myself. However, the Grievance Committee Committee was mislead by its Chairman, Lawrence Freshman, into believing that I did not want to attend and this matter was not reset. Freshman also should have recused himself, inasmuch as I sued him and his firm for a client alleging their fraud and misconduct as attorneys.

ALLEGED JUNE 6TH STATEMENT OF LINDA SERBIN

Apparently, on or about June 6, 1998 and not in the presence of your investigator, Jon Serbin finally coerced Linda Serbin into signing a rote statement that she joined the complaint of Jon Serbin. Although the statement is notarized by your investigator, Ms. Serbin

denies that she signed it in his presence.

If Linda Serbin has made a choice to make a complaint against the undersigned, I would like the opportunity to respond to that complaint in the normal course and with due process. I do not think that the Florida Bar can now amend Jon Serbin's complaint at this stage of the proceedings, after this matter has been remanded by the Florida Supreme Court for findings on the face of the pleadings as the stood on January 20, 199[8].

DISCUSSION

As reflected in my July 20th letter to Mr. Wenzel, this is a fee dispute case. Furthermore, as reflected in my response and exhibits in the Florida Supreme Court, I was grossly denied due process when the 11th Circuit Grievance Committee, who forwarded this matter was intentionally mislead by its Chairman, Freshman. Freshman should also have recused himself, inasmuch as he was a defendant, where I sued Freshman and his firm, because of their fraud and misconduct as lawyers.

Besides the legal problem with this case [see Mabie v. Garden Street, 397 So.2d 420 (Fla. 1981)], the process to date has been grossly unfair to me. I am entitled to due process. Having been afforded the right to appear and defend this cause I should be allowed that right. The Florida Bar and its Grievance Committees are governed by the Rules of Professional Courtesy and the Rules of Procedure regarding conflict resolution. Ms. Evans your previous attorney in this matter, never followed either the rules of professional courtesy or the rules of procedure.

I would request that this matter be remanded to the

Grievance Committee based upon the new June 6, 1998 statement of my client. I would like to defend this matter if Ms. Serbin after all these years has been forced, coerced and cajoled into making a complaint. Seondly, I would renew my request as stated in my March 23, 1998 letter.

I have discussed referring this matter for your review and consideration of this matter with Mr. Wenzel. His of course, in no position to overrule anyone in the train of this fiasco.

Additionally, if you are inclined to do nothing with this matter, I would request an in camera off the record meeting with you to discuss the dilemma, in which the Florida Bar in the case is trying to force me to violate my attorney client privilege in order to respond to the complaint of Jon Serbin, who was at no time my client, when any funds were received herein.

I would appreciate you careful consideration of this matter. If you have any questions or need additional information please contact the undersigned forthwith. I look forward to working with you for the effective resolution of this matter.

Very Truly Yours,

CALVIN DAVID FOX
Fla.Bar No. 192098

Via Facsimile: (850) 561-5665
Cc: GREGG WENZEL, Esq.

[ALL FLORIDA BAR FILES]

CLOSE OUT COVER SHEET

RESPONDENT: CALVIN FOX

COMPLAINTANT: TFB

TFB FILE NO. 97-70,300 1998-71,093(11I)

FILE REVIEWED BY: NP

DATE: April 5, 2001

AND DETERMINED TO BE READY FOR PUBLIC RECORD REVIEW.

SIGNED: ARLENE SANKEL.

CALVIN DAVID FOX and FAMILY

BEST AVAILABLE COPY